

PUBLIC LAW BOARD NO. 3224

Award No. 6

Case No. 6
Carrier File YM-177

Parties Railroad Yardmasters of America

to and

Dispute Southern Railway Company

Statement

of Claim: Claim of Birmingham Yardmaster J. A. Cameron for a retraction of a letter of reprimand issued to Mr. Cameron May 15, 1982 and that his record be cleared on the incident of April 29, 1982 in which L&N Train No. 296 at 10:45 p.m. being lined up at 27th Street Interlocking and then having a board taken away causing said train to pass a stop signal. Investigation was conducted May 4, 1982. It is further appealed on behalf of Mr. Cameron that he be paid four hours pay at the yardmaster pro rata rate under the provision of Rule 14(B) of the effective working agreement, and that any and all rights restored that he otherwise would be precluded from as a result of the unjust assessed discipline.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated May 27, 1982, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, on April 29, 1982, was assigned to and working as Yardmaster 3:00 PM to 11:00 PM at Carrier's 27th Street Yard office, Birmingham, Alabama. He was responsible for the 27th Street Interlocking, some times referred to as the puzzle, and the surrounding industrial area.

During the early evening SCL Train No. 296 suffered an engine failure while moving east on Southern Main Line No. 2 thereby requiring

its crew to double that train. They took their head end eastward to the SCL yard. Thereafter, said crew were to return with the light engine to pick up the rear end of the train which had been left standing on No. 2 main line.

There were two signals to control and govern the movement of the SCL engine back to the rear portion of the train. The first of such signals was in view of Claimant Yardmaster at the 27th Street yard office. The second signal controlled the movement on the L&N main line and was referred to as the "L&N gate."

When the SCL crew was doubling the head end to the yard, Claimant talked with both the L&N Operator and L&N Trainmaster. He advised them that the crew had left the train too close to the circuit to permit a proceed signal at the L&N gate. Claimant asked them to instruct said crew to stop at 27th Street and call the Southern Operator for permission to pass the signal in order to get back on their train. However, Claimant neither relayed such instructions to the Southern Operator nor did he inform her of his plans for getting the SCL crew back to their train.

Said Southern Operator and the Board which controls the signals and switches for the "puzzle," are located 8 miles away in the Norris yard office.

Claimant, about 10:45 PM, instructed said Norris yard Operator to line up the SCL engines to get them back on their train. He added that if she could not give them both signals not to give them any. The Operator "punched" the first signal adjacent to 27th Street office as she was receiving Claimant's instructions. After the Operator heard the rest of the instructions she told Claimant she could not get the signal at the L&N gate. Claimant Yardmaster then told the Operator that he did not want them to have any signal. When the Operator asked Claimant if the engines were back she received no answer from him causing her to instantly change the signal back to red. However, in the mean time said SCL engine has left the yard and was only a few feet from the signal when it changed. As a result the engine passed the red board by 10 to 15 feet.

As a result of this incident, Claimant was notified to attend a formal investigation:

"This investigation concerns L&N Train No. 296 at 10:45 PM, Thursday, April 29, 1982, being lined up at 27th Street Interlocking and then your taking the board away from L&N Train No. 296, causing L&N Train No. 296 to pass a stop signal..."

Carrier concluded from the investigation held that Claimant was culpable. It imposed a reprimand as discipline therefor.

Rule 17 - Discipline (F), reads:

"(F) Unless extended by mutual agreement, decision will be rendered within ten (10) days from date of the final hearing."

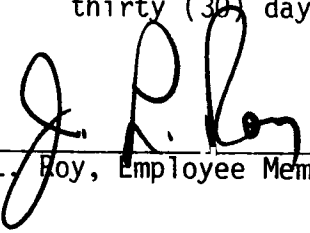
Claimant received his notice of discipline on December 15, 1982. Such receipt was not in violation of the above rule. The decision, as mandated, was rendered as noted on May 14, 1982 within 10 days of May 4th, the day of the hearing. The investigation was concluded on May 4th and the disciplinary decision as reflected by the certified letter, shown the Board (P35 4182939) demonstrated that it was posted on May 14th to Claimant. That was within the required ten days. Hence, Claimant was timely notified to his discipline. It has long been recognized that the burden of notification has been met when the notice is sent or rendered. The determinative date for measuring the end of a time limit is the date when the notice was deposited in the U.S. Mails and not the date when Claimant receives it. The burden or test under the rule is when the decision is rendered not received. Rule 17(F) was properly and timely complied with. Fourth Division Award No. 1717 (Weston) involving these same parties similarly decided as herein and also denied such protest.

The Board finds that there was insufficient evidence adduced to support the conclusion reached by Carrier that Claimant was culpable and had violated Operating Rules GR-4, 542(a), 1200 and 1201. One question arising is whether Claimant by requesting, in qualified terms, permission of an Operator for a train movement and said Operator had acted before completion of Claimant's request should be held accountable when an

incident occurs therefrom? We think not. This record fails to so support. Here he is held accountable for the failure of others. Carrier's conclusion is arbitrary and capricious and represents an abuse of a discretionary right.

Award: Claim sustained.


Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.



J. L. Roy, Employee Member



C. B. Thomas, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued
September 22, 1983.