

PUBLIC LAW BOARD NO. 3640

PARTIES ) RAILROAD YARDMASTERS OF AMERICA  
TO )  
DISPUTE ) SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"Claim of Knoxville Yardmaster J. A. Hayes that charges be formally withdrawn concerning discipline assessed December 13, 1982, following investigation held December 6, 1982, that Claimant's record be cleared and that he be paid for all time lost in addition to eight (8) hours pay at the yardmaster pro rata rate for attending investigation in compliance with Rule 14(B) of the effective working Agreement, that vacation rights be restored, seniority unimpaired and any and all rights restored that he otherwise would be precluded from as a result of this unjustly and unfairly assessed discipline of sixty (60) days suspension."  
(Carrier File: YM-223)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The claim arises as a result of Carrier having determined that Claimant was guilty as charged of allowing a yard job to stand idle between 3:40 AM and 4:50 AM while he was assigned as the third shift yardmaster on November 30, 1982 in Carrier's City Yard, a satellite yard of Carrier's Sevier Yard at Knoxville, Tennessee.

There is no question in review of the record that the engine of the yard job in question was observed by three Carrier officials who were conducting rules checks on the various yard crews working at both City Yard and Sevier Yard to have remained idle or stopped in front of or adjacent to Claimant's yard office for almost totally unexplained reasons for the aforementioned one hour and ten minute period of time.

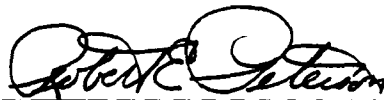
The Board has given consideration to various procedural arguments of the Organization, but fails to find sufficient basis to hold that Claimant had been denied benefit of a due process hearing. The Board also finds no reason to hold that the discipline be set aside because it could be shown that there was a conflict of testimony with respect to certain aspects of the observations of the

Carrier witnesses. Testimony as concerned whether the engine headlight was or was not illuminated; who accompanied whom when a telephone call was made to Claimant; who remained in the company car; where each witness was standing on the bridge to make their individual observations; or, that the Carrier officers would state that no cars were attached to the engine and the crew members would testify that cars were coupled to the engine, all must be viewed as inconsequential with respect to the principal issue of whether or not the yard engine was indeed idle when there was reason for it to have been away from the yard office switching cars.

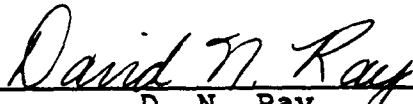
Turning to the discipline administered Claimant. It remained undisputed that during a part of the time in question that the crew was entitled to and took a 20-minute meal period. It also appears to have remained unrefuted that during some of the time the conductor had worked on paper work, the crew had occasion to use the washroom facilities, and that Claimant had continued to perform certain of his assigned duties. These observations are not meant to imply that Claimant was not guilty as charged, but they are cited in recognition that some reason existed for the engine to have remained idle at least a part of the time. At the same time, it must be considered that the yard crew members had been assessed but 15-day suspensions. Accordingly, and in view of Claimant having had 38 years of unblemished service, we think it may be properly held that discipline assessed Claimant, i.e., a 60-day suspension, was harsh and unreasonable. In our opinion, a suspension of but 20 calendar days would have represented a more appropriate exercise of managerial discretion. It will be this Board's finding, therefore, that discipline be reduced to a 20 calendar day suspension and that Claimant be reimbursed for all time lost beyond such period of time.

AWARD:

Claim sustained to the extent set forth in the above Findings.



Robert E. Peterson, Chairman  
and Neutral Member



D. N. Ray  
Carrier Member



W. C. Stokes  
Organization Member

Norfolk, VA  
February 17, 1989