

PUBLIC LAW BOARD NO. 912

PARTIES) NORFOLK AND WESTERN RAILWAY COMPANY
TO)
DISPUTE) UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Claim of Detroit Conductor C. E. Adkins for removal of five (5) days deferred suspension from his record and pay for all time lost in connection with the investigation held on January 12, 1982, for his alleged violation of Safety Rule 1052.

FINDINGS: This Public Law Board No. 912 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was charged with his failure to allow sufficient distance between himself and standing equipment in No. 1 Ice House Track in violation of Safety Rule 1052 when walking across tracks in the vicinity of Oakwood Tower at approximately 8:02 p.m. on December 28, 1981.

The Assistant Trainmaster testified that the claimant walked around a cut of tri-levels that were sitting on No. 1 Ice House Pocket. He believed that the claimant walked too close to the cars, perhaps ten or twelve feet, and he proceeded downstairs and advised the claimant that he went too close to the end of the cars.

The claimant advised the Assistant Trainmaster that he thought he was twelve feet from the cars. The Assistant Trainmaster believed that was too close because there was approximately five inches of snow on the ground. The claimant was issued five days deferred suspension for the violation.

Rule No. 1052 states:

"Always look in both directions before stepping on or getting close to any tracks. When crossing tracks near standing equipment, always allow room to avoid injury in case of sudden movement . . ."

The evidence establishes that the claimant looked in both directions before crossing the track, and the only possible violation of the rule would be in not allowing room to avoid injury in case of a sudden movement.

The claimant testified that the employees had never been advised of any specific distance when there was snow or ice on the ground, and he had always been told that twelve to fourteen feet was

sufficient. This testimony is uncontraverted, and under the circumstances there is no justification for discipline.

The Carrier is directed to remove the discipline from the record of the claimant and to pay the claimant for any time lost as a result of the investigation.

AWARD: Claim sustained.

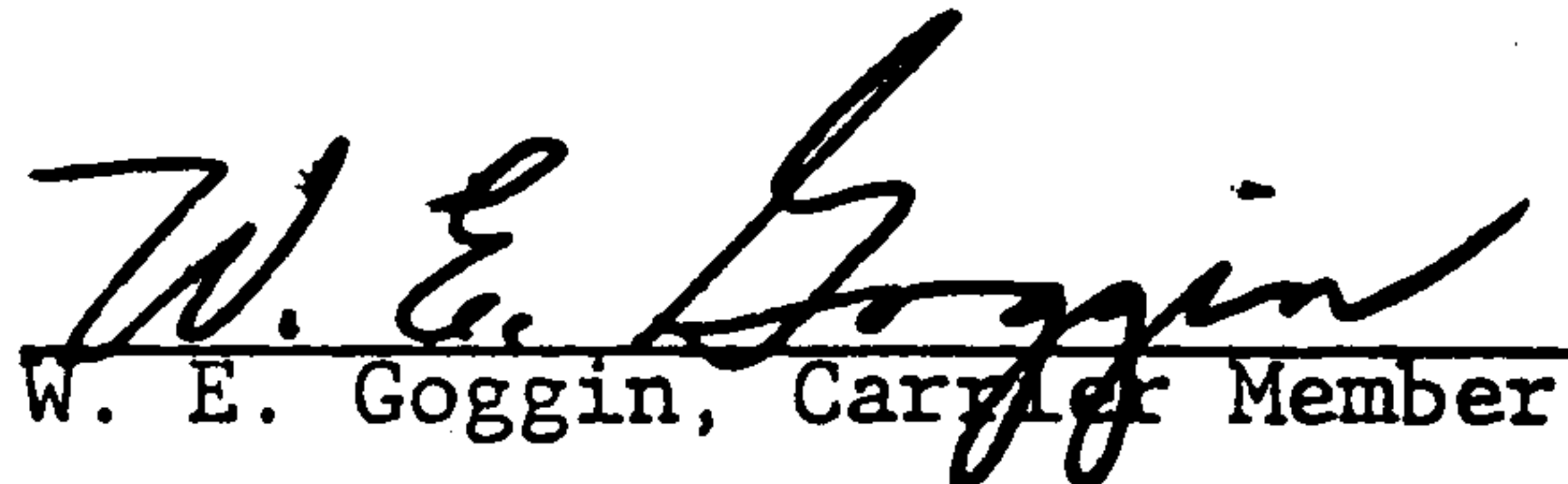
ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.



Preston J. Moore, Chairman



G. T. DuBose, Organization Member



W. E. Goggin, Carrier Member

St. Louis, MO
June 30, 1983

Remove discipline - pay for time lost as result of the investigation