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PUBLIC LAW BOARD NO. 1312

Award No. 225

Docket No. 260

UTU File No. T 37310/600

Case No. 30912-D

Parties United Transportation Union (T)

to and

Dispute The Baltimore and Ohio Railroad Company

Statement of Claim: "Request of Brakeman R. B. Davis for removal of Discipline Entry from his service record and pay for all time lost in connection therewith including Health and Welfare payments and benefits denied."

Findings: The Board finds, after hearing upon the whole record and all evidence, 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 February 19, 1974, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

This claim involves the same factual background as involved in Docket 259, resulting in Award No. 224 the finding of which by reference thereto are made a part hereof. A major distinction, however, as between this docket and that of Docket 259, is that here Claimant was adjudged guilty of that for which he had previously been charged.

However, here, as in Docket 259, the absence of the M&W Foreman in charge of the equipment involved in the collision after his presence.

was determined pertinent and such presence was requested and denied, is deemed to be substantive error. The refusal to postpone the investigation while the witness could be brought in prevented ascertaining an important element as to why and how a collision environment was permitted to develop. We find Carrier's hearing officer was arbitrary and capricious in denying the Local Chairman's request.

The circumstances of the conclusion reached and the evidence adduced indicated that Claimant should have been held accountable. However, the degree of discipline imposed is mitigated by the procedural deficiency. Consequently, we sustain the Claim except for "Health and Welfare Payments." The Board notes that it would have otherwise denied that portion of the Claim concerning "Health and Welfare Payments," as well as "benefits denied" absent a causal showing.

Award: Claim sustained as per findings.

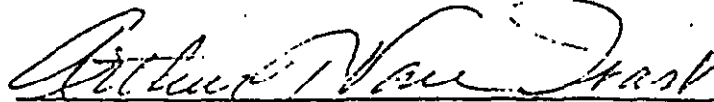
Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance below.



A. F. White, Employee Member



F. B. Plummer, Carrier Member



Arthur T. Van Wart, Chairman and Neutral Member

Issued at Baltimore, Maryland, August 2, 1977.