

PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. That the Carrier violated Article V of the Agreement by unjustly dismissing Illinois Division Miscellaneous Machine Operator S. L. Prough from service July 16, 1979.
2. That the Carrier now reinstate Mr. Prough to service with seniority, vacation, all other rights unimpaired and compensation for all wage loss beginning July 16, 1979 continuing forward until he is returned to service.

FINDINGS: This Public Law Board No. 1582 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 operating a Ballast Regulator AT-324 from Marceline to Ethel, Missouri. The claimant received authority from the train dispatcher to occupy the south track from Marceline Yards to West Ethel at 11:51 a.m.

The claimant approached West Ethel and commenced to slow his machine. However, as the claimant applied the brakes, they did not function, and this resulted in his lowering the plow in an effort to stop the machine before passing the signal and entering the interlocking. Nevertheless, the machine passed the signal at West Ethel and entered the interlocking, and the Ballast Regulator derailed in the interlocking switch and caused damage to the plow.

The claimant was notified on July 9, 1979 to attend a formal investigation on July 16, 1979 to develop all the facts and place his responsibility, if any, in connection with possible violation of Rules C, 1056, and 332-A, Rules Maintenance of Way and Structures, Operating Department, Form 1015 Standard, effective January 5, 1975 concerning his alleged failure to render proper reports on condition of his machine, alleged improper care, maintenance and operation of his machine and alleged operation of his machine outside specified limits that were authorized by control station on June 26, 1979, near interlocking at West Ethel, Missouri, which resulted in Ballast Regulator AT-324 being derailed and damaged extensively.

Pursuant to the investigation the Carrier found that the claimant violated Rules C and 332-A, Rules Maintenance of Way and Structures Operating Department, Form 1015 Standard. The claimant was removed from service.

The Organization filed a claim for reinstatement, including compensation for wage loss, and the claim was appealed to the Carrier's highest officer. On October 3, 1979 the claimant was reinstated to service, and the issue of pay for time lost was appealed to this Board for a decision.

The Organization contends that the brakes did not work on the vehicle and it was therefore impossible for the claimant to stop the vehicle inside the specified limits.

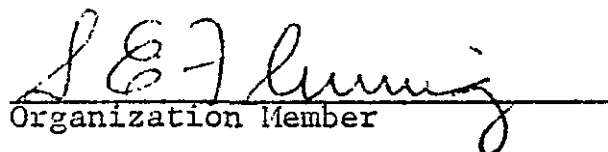
The Board has carefully examined the transcript of record and finds that the claimant testified the brakes on the Ballast Regulator were working before and after the accident. The claimant also testified that before departing for Ethel he checked the brakes, greased the bearings and all the other mechanical, and the vehicle seemed to be in operable condition to bring on the main line. The claimant testified he thought the brakes might have failed because of an air lock.

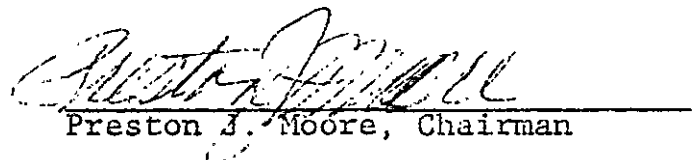
The evidence is insufficient to find that the claimant improperly cared for and maintained his machine. It is difficult to believe the brakes worked properly before and after the accident but failed at this particular time.

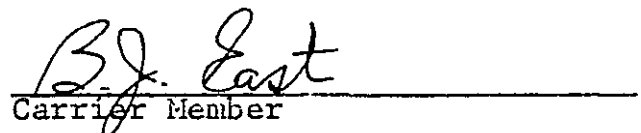
It is recognized that the Carrier reinstated the claimant, and the only issue before the Board is the matter of pay from August 3, 1979 to October 3, 1979. Since the evidence indicates that the claimant was not guilty of all the charges, it is the opinion of the Board that any discipline in excess of a thirty day suspension is excessive. Therefore the claimant will be paid for all time held out of service in excess of thirty days.

AWARD: Claim sustained as per above.

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


Organization Member


Preston J. Moore, Chairman


Carrier Member