

AWARD NO. 334
Case No. 371

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier's decision to remove Eastern Division Foreman R. C. Burgoon from service was unjust; That the Carrier now compensate Claimant Burgoon for pay for all wage loss as a result of investigation held July 19 and September 16, 1985 for the period September 16, 1985 to October 21, 1985 and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimant violated the rules enumerated in their decision.

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 notified to attend an investigation at Emporia, Kansas, July 12, 1985, to determine the facts and his responsibility, if any, in connection with a report alleging that Train 1-305-24, Engine 5005, was placed in emergency to avoid hitting Back Hoe AT 5412 at approximately 3:30 p.m. on June 24, 1985, and to determine if the claimant violated Rules C, K, and 1067 of Form 1015 Standard. Pursuant to the investigation the claimant was found guilty and dismissed from the service of the Carrier.

The transcript of record contains 55 pages of testimony and some exhibits submitted by the parties. The Board has studied the testimony and evidence contained therein. The claimant herein was foreman of the crew and obtained clearance from Dispatcher Donovan to have the North Track between HU and 76. At approximately 2:14:45, Dispatcher Donovan called the claimant and advised him that he would need the North Track for 305 Train, which would be there in approximately thirty minutes. The claimant advised him that he could have it back at that time.

The claimant had a Back Hoe on the track when the train was approaching. The engineer stated that it appeared to him that they did not have time to get the Back Hoe off the track, and he went into emergency. The emergency dropped a knuckle, and the train was delayed approximately fifty minutes.

The transcript of record indicates that the claimant admitted his responsibility in connection with the incident and was offered thirty demerits. He did not accept those demerits, and pursuant to the investigation was dismissed from the service of the Carrier.

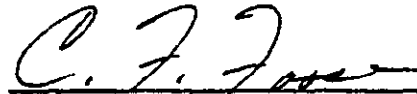
The Board is of the opinion that the discipline assessed in this case is too severe. Therefore the discipline assessed will be reduced to 30 demerits.

The Carrier is directed to reinstate the claimant with an assessment of 30 demerits against his record and to pay the claimant for all lost wages.

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.


Preston J. Moore, Chairman


Union Member


Carrier Member

Dated at Chicago, Illinois
December 9, 1985