

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier's decision to assess Claimants J. J. Rojas and J. N. Navarette twenty demerits each after investigation April 15, 1986, was unjust; That the Carrier now expunge twenty demerits from Claimants' records, reimbursing them for all wage loss and expenses incurred as a result of attending the investigation April 15, 1986, because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimants are guilty of violation of rules they were charged with in the Notice of Investigation.

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 claimants were notified to attend a formal investigation at the Trainmaster's Office in Stockton, California on April 9, 1986, concerning ballast regulator AT 883 colliding with tamper AT 4711 which resulted in alleged injury to Machine Operator J. N. Navarette and damage to machines at approximately 1:15 p.m. on March 14, 1986. The claimants were charged with the possible violation of Rules A, B, I, 607, 962, 963, 964, and 1041, Form 1015 Std., Rules Maintenance of Way and Structures, effective October 28, 1985. Pursuant to the investigation the claimants were found guilty and each was assessed twenty demerits. The investigation was postponed until April 15, 1986.

Claimant Rojas testified that he was working ballast regulator 883 and following tamper 4711. He stated that he was about three poles behind the machine but attempted to get closer so that he could pass with the gates down and that when the machines in front of him passed the gates went up and he slowed down, he blew his whistle, and since there were people waiting for him to go by, he stepped on the gas. He testified that when he was about in the middle of the crossing, he saw the machines stop ahead of him without any signals and that he tried to stop, but the machine was going too fast, and he switched from reverse to forward because he was running backward on the machine, but the motor died,

and that he blew his whistle quite a few times so that the people could get out of his way. He stated he saw Mr. Navarette on the south side of the track looking at the machine. He stated he first saw him when he was about twenty-five feet before he hit the machine. He stated he got off the machine to see if people were hurt, and that he asked Mr. Navarette how he felt and he responded like this, but you know it is nothing. He stated that he later learned that Mr. Navarette had been hurt. He stated he was going approximately two to three miles an hour when he hit the 4711 tamper.

Relief Foreman J. F. Castilleja testified that he did not see Mr. Navarette jump or get off the 4711. He stated that he asked Mr. Navarette if he was alright and he responded yes. He testified that he did not know if Mr. Navarette gave a stop signal or not. He did state that Mr. Navarette and Mr. Rojas had radio communication.

Mr. T. C. Mireles testified that he was on the machine in front of tamper 4711. He testified that he saw Mr. Navarette walking down off the shoulder after the accident.

Roadmaster Frank McBee testified that Mr. Navarette told him that he was on the tamper 4711 when it was rearended by the ballast regulator and that he was thrown against something inside the tamper and injured his neck and shoulders. He testified that the brakes were tested on the two machines and found to be in proper working order. He further testified that he did find an oily film on the top of the rail. He testified that on the following day he accompanied Mr. Navarette to his office for the purpose of sending him to the doctor's office for examination and again questioned him and used his daughter as an interpreter. He testified that the claimant stated that he braced himself and that when he was struck by the ballast regulator, he was thrown out of the tamper onto the ground. He testified that the damage to all of the equipment was in the neighborhood of \$3200.00. He also stated that the oil film on the rail would make it more difficult for Mr. Rojas to stop the regulator.

Mr. Rojas testified that Mr. Navarette failed to signal the stop and that he had the lights on when they went to the east switch, and when they started going west, he still had the lights on. He testified that he saw no flashing lights at any time on tamper 4711.

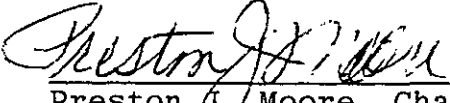
After reviewing all of the foregoing testimony and evidence of record, it is the opinion of the Board that Machine Operator J. N. Navarette is principally responsible.

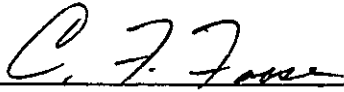
Claimant J. J. Rojas violated Rule 964, but his violation was not as serious as that of Mr. Navarette. For that reason the Carrier is directed to reduce his discipline to ten (10) demerits.

The twenty (20) demerits assessed J. N. Navarette will stand.

AWARD: Claim disposed of 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
August 1, 1986