

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. Carrier's decision to remove former Texas Division Machine Operator H. M. Person from service, effective March 27, 1989, was unjust.

2. Accordingly, Carrier should be required to reinstate claimant Person to service with his seniority rights unimpaired and compensate him for all wages lost from March 27, 1989.

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.

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In this dispute the claimant was notified to attend an investigation in Houston, Texas on April 4, 1989 to develop all the facts and place his responsibility, if any, in connection with possible violation of Rules A, I and 1041, Rules Maintenance of Way and Structures, effective October 27, 1985, as amended, concerning his alleged failure to safely operate Ballast Regulator AT 99059 resulting in a collision with Tamper AT 4710 and subsequently shoving Tamper AT 4710 into rear of Tamper LM 80217 on Wednesday, March 22, 1989.

The investigation was postponed until April 14, 1989. Pursuant to the investigation, the claimant was dismissed from the service of the Carrier.

The Chairman of the Investigation read Rules A, I and 1041 into the record, and the claimant was asked if he understood those rules, and he replied that he did.

Foreman R. A. Moon testified his crew was looking for a location between Mile Post 128 and 129, and they backed up to look for it one more time. He stated the claimant had been working the switch immediately behind them at Bragg.

Foreman Moon testified they stepped off the machine and had been there for approximately three minutes when C. E. Thomas yelled and

waived his arms toward the back of the machine, and then he turned around and yelled for everyone to move back. Mr. Moon then stated at that time he looked up and saw the Ballast Regulator coming toward the Pump Tamper AT 4710.

Foreman Moon further testified there was no effort made by claimant to stop, and he hit the back of the Pup Tamper and drove it into the back end of LM 80217. He stated the claimant slid the Pup Tamper approximately thirty feet with the brakes locked up, and the line assembly was torn up on Tamper LM 80217.

Foreman Moon testified the claimant was supposed to come along behind them and work where they had tamped and to keep on coming behind them until the end of the day. Foreman Moon also stated he had not gone so far that he couldn't see the Ballast Regulator behind him at all times.

Foreman Moon testified that when the claimant hit Tamper 4710 he moved it approximately thirty feet and hit the LM 80217 and then went another fifteen feet after he hit LM 80217, so he shoved the Pup Tamper approximately forty-five feet. Foreman Moon stated he had given the claimant specific instructions to work behind him and to groom the locations he had worked and to stay up with him.

The claimant testified the machines in front of him were within his eyesight, but he was unable to stop and slid into the machines. The claimant testified he had gotten too close to stop. The claimant admitted it was his responsibility to control his machines in a manner which would allow him to stop short of men or machines or obstacles in his path.

The Board has carefully considered all the evidence and testimony in this case. The record establishes that the claimant has approximately 38 years of service but has a poor work record. Because of the claimant's length of service, the Board finds the claimant should be reinstated with seniority and all other rights unimpaired but without pay for time lost.

The Carrier is directed to reinstate the claimant on a conditional basis in that the Carrier has the right to place the claimant in a position which the Carrier believes he is qualified to perform. Further, the claimant will remain in that position, if his seniority entitles him to do so, until such time as the Carrier is satisfied he can properly and safely operate the machines assigned to him.

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
Preston J. Moore, Chairman

*Dated at Chicago, Illinois
January 29, 1990*

C. J. Jones
Union Member

L. L. Pope
Carrier Member