

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to assess Claimant Sanchez ten (10) demerits after investigation February 5, 1990 was unjust.
2. That the Carrier now expunge ten (10) demerits from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation February 5, 1990 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant is guilty of violation of rules he was 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 claimant was notified to attend an investigation in Raton, New Mexico on January 29, 1990 concerning report of an incident involving Section Truck ATSF 38017 driven by the claimant Truckdriver allegedly pulling away from Gondola ATSF 74342, leaving Trackman M. P. Orosco hanging from its side, resulting in injury at approximately 8:30 a.m. on January 2, 1990 at Trinidad, Colorado so as to determine the facts and place responsibility, if any, involving possible violation of Rules A, I, 1007, 1606 and 5001 of the Safety and General Rules for All Employees, Form 2629, Std. The investigation was postponed until February 5, 1990.

The Board has studied the 39 pages of testimony and the exhibits submitted by the parties. The claimant testified he was the driver of a two-ton truck which was backed up to a gondola. He stated he and Trackman Orosco were on the ground, and Trackman Orosco instructed him to move the truck forward.

The claimant testified he got in the truck and moved it forward in a gradual move. He stated he moved it forward about 7 feet and when he got out he saw Trackman Orosco laying there on the ground under the gondola. He stated Mr. Orosco told him his hip hurt which happened when he fell off the truck.

The evidence establishes that Mr. Aragon, Mr. Chavez, Mr. Beaman, Mr. Orosco and the claimant were working together at that location.

Trackman Orosco testified he told the claimant to move the truck, and there was only a minute or two between the time he instructed the claimant to move the truck and when he moved it. He testified he was on the bed of the truck when it started to move, and he did not remember whether he was standing or sitting on one of the tool boxes. He also stated he felt the engine start up. Mr. Orosco stated he was waiting for some signal the truck was going to move but he had not given any instructions to the claimant regarding giving a signal.

Trackman B. E. Beamon testified they were throwing out scrap, and the men weretalking in Spanish but he gathered they were going to move the truck, so he just stepped back up against the tool box and caught hold of the boom, and Mr. Orosco stepped up on the tool box and walked ahead and put his hands on the rim of the gondola, and the claimant moved the truck.

Trackman Otero testified that Mr. Orosco told the claimant to move the truck so he and Bruce could get down, and the claimant got in the truck and proceeded to move it, and for some odd reason Orosco was holding on to the gondola.

Mr. Otero further testified that while the truck was moving Orosco's feet slipped off the truck leaving him hanging and while his feet slipped off the truck, his body hit the side of the gondola causing his legs to lunge him backward and he fell to the ground striking his head, and his hard hat and glasses flew off his head.

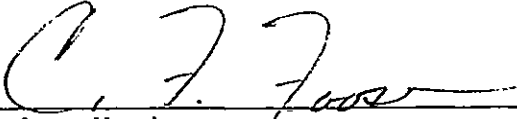
Mr. Otero also testified that he told Mr. Orosco to tell the foreman about what happened, and the foreman told him he could do nothing about it because it was Orosco's fault and closed the door on him.

Mr. Orosco testified that about 40 seconds elapsed from the time the claimant was told to move the truck until the time he moved it.

After reviewing all the evidence the Board finds there is no justification for discipline to be assessed the claimant herein. The 10 demerits will be expunged from the claimant's record and he will be paid for time lost provided for in the Agreement between the parties.

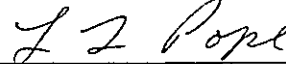
AWARD: Claim sustained as per above.

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


Union Member


Preston J. Moore, Chairman

*Dated at Chicago, Illinois
March 26, 1990*


Carrier Member