

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

That the Carrier's decision to remove Southern Region Machine Operator H. K. Henderson from service was unjust.

That the Carrier now reinstate Machine Operator Henderson with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 1:00 p.m., Monday, April 1, 1991, continuing forward 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, and even if claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 Houston, Texas on April 1, 1991 to develop the facts and place his responsibility, if any, in connection with possible violation of Rules A, B, I, 1007 and 1026, Safety and General Rules for All Employees, Form 2629 Standard effective October 28, 1989; Rules 4(c) and 1041, Rules and Instructions for Maintenance of Way and Structures, Form 1015 Standard, effective October 29, 1989, Maintenance of Way Bulletin No. 19; and Section 12.2 Chief Engineer's instructions, Form 1015 Chief Engineer's Instructions Standard, concerning the collision which occurred at Brenham, Texas on March 17, 1991 between Model 40 Burro Crane, to which he was assigned and operating, and the Little Giant Crane.

Pursuant to the investigation the claimant was removed from service for an infraction of Rules A, B, I, 1007, 1026, Safety and General Rules for All Employees, Rules 4(c) and 1041, Rules and Instructions for Maintenance of Way and Structures, Maintenance of Way Bulletin No. 19 and Section 12.2 Chief's Engineer's Instructions.

The transcript of the investigation contains 83 pages of testimony. That testimony and the exhibits submitted by the parties have been studied and considered by the Board.

The claimant was the first witness called, and the Union objected. The Carrier has the right to call witnesses in any order they so desire and has the right to call the claimant first.

The claimant admitted he was operating the Model 40 Burro Crane on March 17, 1991 and collided with the Little Giant crane at Brenham on that date. The claimant testified he discovered his magnet was not working, and he used the gondola to stop the machine.

The claimant also testified as they were coming in he picked up speed, and as he got to Royce Crossing, he used the hand brake on the gondola to stop or slow the gondola down because at the road crossing, the public is in the right of way, and he knew he could not go through the road crossing at a high rate of speed. He stated he went on in and at each road crossing he used the gondola to slow the car down.

The claimant testified, however, that when he got to Highway 36 Overpass Crossing, he came around the corner, and as he was approaching Jackson and Field Street, he went to apply the brakes, and he guessed the valve stuck and would not slow him down. He stated he attempted to apply the brakes on the machine, and it wouldn't slow down, so he started reversing the gear to stop the machine, but that did no good, and at that time he was hollering at Reba stating he had no brakes, and he guessed he hollered about four times.

The claimant testified that by the time he got around the corner he saw the Little Giant was sitting on the main line, and he just jammed it in reverse and left it in reverse, left the foot brake on the machine and the hand brake on the gondola car and "deballled" it because most of the time deball will stop the machine and the car.

The claimant further testified that all this did no good, and he was about to jump when he looked down and saw rails and plate where he was going to jump, so when he jumped to miss these, he got twisted up in the air, and his landing wasn't too good, and he started rolling and falling.

The claimant testified that when he used the phrase "deball," he meant he let all the air out, and the car was designed so that this would stop the car.

The claimant testified that when he took control of the gondola, he did not know if the brakes were set on the gondola. He stated he used the gondola to stop the machine by using the emergency brake. He stated he used the brake on the burro crane to stop the gondola and slowed it down several times with the gondola.

The claimant was asked if he checked the brakes when he checked into the gondola, and he stated he did not do so but he was in first gear when he pulled out of the switch, and he applied the brakes, and they stopped good and everything. The claimant stated he did not make a visual inspection on the brakes on the gondola.

The Union objected to Assistant Roadmaster R. S. Maddox being allowed to remain in the room after he had testified. The Board finds that

prior to the commencement of the investigation the Union did not request that the witnesses be sequestered. This means to request that none of the witnesses be present during the testimony of the other witnesses. If such is requested by either party, it should be granted, and after a witness has testified, he should not be allowed to remain if he is going to make further testimony. Under the circumstances herein the Board finds no justification not to consider Mr. Maddox's later testimony.

Machine Operator A. J. Hilley testified that he placed the car he had been working on in emergency. This is the car which claimant later picked up. Mr. Hilley testified it would not be advisable to attempt to operate a crane hooked to a gondola without hooking up the air to the car. He said it would be kind of foolish.

Assistant Supervisor Roadway J. H. Graham testified that on the morning of the 18th he inspected the Model 40 Burro Crane and checked all of the safety items. He stated one brake pin was gone out of the brake riggings, and when he started it up, the brake pipe pressure was 30 pounds high, and the main reservoir pressure was 70, so the brakes on the crane were working.

Supervisor Graham further stated the rear was applying but the front was not applying because the brake pin was out. He stated the main reservoir pressure should be set between 90 and 105 and the brake pipe about 70. He stated there was no way the collision which occurred would have resulted from the settings being off.

Equipment Supervisor D. Meredith testified that the charge to the brake pipe pressure of 30 psi on the Burro Crane would set the brakes very, very slowly and would be a loose set. He also stated the emergency reservoir on the gondola would be inoperable at 30 psi. He testified that everytime you pick up a car, you should visually see that the brakes work.

Roadmaster Wagner testified that the proper way to release the brakes on a car would be to connect the air hoses, open the angle cocks, charge the system, pump the air up to release the brakes. He stated the claimant did not release the brakes in the proper manner and did not explain why he did not do so.

After reviewing all of the testimony and the claimant's past machine operator's record, the Board finds that the claimant's Class I and II machine operator rights should be revoked.

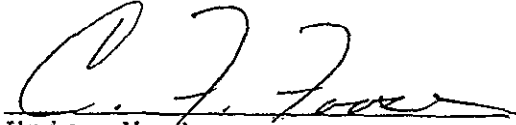
At the same time the Board finds that permanent dismissal is too severe and directs the Carrier to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost.

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.

Dated at Schaumburg, Illinois
August 5, 1991


Preston J. Moore, Chairman


Union Member


Carrier Member