

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. Carrier's decision to suspend Track Foreman M. L. Miller from service for period of 60 days, effective March 10, 1994 was unjust.
2. Accordingly, Carrier should be required to compensate the claimant for all wages lost from March 10, 1994 through and including May 8, 1994.

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 a switch engine and a backhoe had a collision in Temple Yard on March 8, 1994. The occupant of the backhor was working under the direction and supervision of Claimant Miller.

The Assistant Director of Maintenance Gabriel and Roadmaster Mooney had a discussion with the claimant and the operator in order to determine what occurred. Mr. Gabriel and Mr. Mooney determined that the claimant may have violated Rules A and B of the Safety and General Rules for All Employees and Rule 664 of the Rules and Instructions for Maintenance of Way and Structures for failing to provide proper protection to the operator of the backhoe while it was operating near the lead track.

An independent machine operator working in conjunction with the claimant was hit by a passing yard switch engine. Thereafter, the claimant waived his right to an investigation and accepted his responsibility for the matter with which he was charged and accepted a 60 day suspension.

The Carrier alleges that on March 21, 1994, the day the claimant accepted responsibility for the accident and waived his right to a formal investigation, the matter was discussed in a three-way telephone conference between the claimant, Mr. Gabriel and Mr. Blado in the BMW office.

The Carrier further alleges that the claimant asked Mr. Blado if he should waive his right to a formal investigation and accept the disciplinary assessment, and Mr. Blado advised him that was his decision to make. The Carrier points up that on that basis the claimant, of his own volition, admitted responsibility. ~~offel~~

the rules violation and waived his right to a formal investigation under the provisions of Rule 13 and accepted the 60 day suspension.

The Organization has now processed this claim, alleging disparate treatment of employees.

Such may be the case. However, when the claimant waived his right to an investigation and accepted the discipline, there is no basis to appeal.

AWARD; Claim denied.

*Dated in Schaumburg, Illinois
November 10, 1994*

Preston J. Moore
Preston J. Moore, Chairman

C. J. Jones
Union Member

L. L. Pope
Carrier Member