

PUBLIC LAW BOARD NO. 1795

Award No. 21
Case No. 21

PARTIES Southern Pacific Transportation Company (Pacific Line)
TO and
DISPUTE Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

- "1. The Carrier violated the provisions of the Agreement when as a result of a formal hearing held on February 4, 1977, it dismissed Crane Operator A.J. Miller, effective February 15, 1977 said action being discriminatory, unjust and in abuse of discretion.
2. That the Carrier now reinstate Claimant to former position of Crane Operator with seniority and all other rights unimpaired and compensate him for all wage loss suffered beginning February 15, 1977 and all days subsequent thereto until he is reinstated."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

On January 18, 1977 Claimant, a Crane Operator, was operating a crane with a helper on the main track between Picacho and Wymola, Arizona. Claimant was charged with operating without assuring that proper protection for train was provided. On the day in question, because of the alertness of the Train Dispatcher and an Engineer of an approaching train, a serious head-on collision was narrowly averted.

There is no essential dispute with respect to the facts on the date in question. The issue essentially is whether or not authority was granted for the occupation of the main track and who was responsible to see that proper protection was given to trains and to the crane in question. The evidence indicates that the Crane Helper Operator Nelson was instructed by Claimant to be in contact with the Train Dispatcher to secure protection. He was on the radio with the Train Dispatcher for this purpose having attempted it on a previous day. The evidence also indicates, however, that no authority to

involved in this dispute and indeed might bear the responsibility if a serious accident had taken place. It must be emphasized that Claimant herein had never had the experience of operating on a main line nor was he prepared to implement the obvious protective procedures. It must be observed, however, that Claimant cannot be absolved totally of responsibility with respect to the incident in question. He was an employee of many years standing who allegedly, and by his own statement, was familiar with the rules. Therefore, his responsibility was to find out the proper procedures to apply if indeed he was not prepared to operate on the main line. Thus, the responsibility of the incident in question must be divided between Carrier and Claimant. The seriousness and Carrier's responsibility for an incident such as this developing which could have resulted in a serious and major tragedy cannot be overstated.

The record indicates that Claimant herein is deceased. It also indicates that he was offered reinstatement on a leniency basis initially on April 7, 1977 but declined to return to work at that time. He subsequently accepted a reinstatement to return to work as a Helper without prejudice to the claim herein and began to work on April 3, 1978. In view of Claimant's being deceased and the reasoning expressed above, the claim in this instance must be in part sustained. As a result, we shall order compensation for the period from the time of initial suspension until April 7, 1977 when he was offered reinstatement but not beyond that point.

AWARD

Claim sustained in part; Carrier will offer compensation for wage loss suffered beginning February 15, 1977 until April 7, 1977.

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.


I.M. Lieberman, Neutral-Chairman


Carrier Member


Employee Member

November , 1979
San Francisco, California