

PUBLIC LAW BOARD NO. 2155

PARTIES) SACRAMENTO NORTHERN RAILWAY
TO)
DISPUTE) UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Claim is made in behalf of Brakeman H. W. Miller for reinstatement of operating rights on the Atchison, Topeka and Santa Fe-Sacramento Northern joint trackage, removal of twenty (20) demerits assessed against his personal record, and payment for all time lost as a result of formal investigation held April 5, 1979.

FINDINGS: This Public Law Board No. 2155 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 the head brakeman of Train Extra WP-2005 East to Sacramento via Stockton. At approximately 2:00 p.m. on the claim date the claimant's train began pulling out on the Atchison, Topeka and Santa Fe main line from the east end of the Dow running lead which is located at Pittsburgh, California. The claimant's train had train order authority.

At 2:05 p.m. the Atchison, Topeka and Santa Fe Extra East 3369, coming from behind, collided with the 14th car in the claimant's train which resulted in a derailment.

The claimant was subsequently cited for a formal investigation, and pursuant to the investigation the claimant brakeman was issued twenty demerits and was barred from operating on the Atchison, Topeka and Santa Fe-Sacramento Northern joint tracks. This barment from operating on the track was a result of the actions of the Atchison, Topeka and Santa Fe Railroad.

It goes without saying that this is a rather complicated case. There were actually three trains involved, the claimant's train, a Santa Fe road switcher, and Santa Fe Train 3369 East. Needless to say, there is a great deal of conflicting testimony as to exactly what occurred.

However, the evidence is clear that the crew of Santa Fe Train 3369 East was waiting for the road switcher to get in the clear for the reason that train orders indicated they had 15 minutes to make a meet with another train at Knightsen, some 13 miles eastward. The evidence further indicates that the road switcher and Train 3369 East had radio communication with each other.

The record also indicates that Santa Fe Train 3369 collided with the 14th car in the claimants train which places it approximately 800 feet from the head engine. This evidence certainly indicates that Train 3369 East had to bear a substantial part of the burden in the cause of the collision. The claimant and his crew did not have radio equipment and were not privy to the radio conversation between the two Santa Fe trains.

It goes without saying that the Board has carefully reviewed Rule 319, and it appears to the Board there was no violation of this rule by the claimant crew. The evidence strongly indicates that the claimant crew was no more guilty than the crew of Train 3369 East, which received no discipline.

It is recognized that a liability factor was involved in this case, but this issue is not before the Board. However, such a factor could have an influence upon the findings of the investigation. The Board finds that the discipline assessed should be set aside.

The Board also feels mandated to take this opportunity to discuss the subject matter of a foreign Carrier who has granted trackage rights to this Carrier barring one of this Carrier's employees from operating over the trackage. Such foreign Carrier does not have that right nor prerogative. The trackage agreement between the parties, Paragraph 12, provides:

"QUALIFICATION OF SACRAMENTO NORTHERN EMPLOYEES. All employees of Sacramento Northern engaged in or connected with the operation of trains, engines or cars on the Red Track shall be required to pass examinations, to be made by a supervisory officer of Santa Fe, on the Operating Rules and Regulations of Santa Fe, and to pass such examinations as to their mental and physical fitness as provided for in Sacramento Northerns' schedule agreements covering such employees.

Santa Fe shall supply Sacramento Northern's employees with necessary books of rules and Sacramento Northern shall pay Santa Fe the sum of \$1.00 for each such book of rules so supplied."

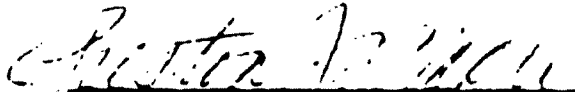
Consequently the only right of the Atchison, Topeka and Santa Fe Railroad in the instant case is to prohibit an employee from this Carrier from operating on such trackage if that employee fails to pass the required examinations.

In the instant case the claimant employee was barred from operating over this trackage for a period of time. At a later point in time the disbarment was lifted provided the claimant could satisfactorily pass the examinations on the operating rules and regulations of the Atchison, Topeka and Santa Fe Railroad.

For that reason the claim will be sustained for the loss that the claimant suffered as a result of being barred from Santa Fe trackage until the disbarment was offered to be lifted by the Santa Fe providing the claimant passed the examinations. The 20 demerits assessed to the claimant will also be removed from his record, and the claimant will be paid for time lost attending the investigation held on April 5, 1979.

AWARD: Claim sustained.

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



Preston J. Moore, Chairman



Organization Member



Carrier Member

Dated this 17th day of February 1981.