PUBLIC LAW BOARD NO. 2366

DOCKET NO. 38
AWARD NO. 26
CASE NO. 1374 MW

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad

and

Brotherhood of Maintenance of Way Employes

STATEMENT OF CLAIM

"The Carrier should pay to the Heirs of Gary L. Martin the benefits set forth in Appendix 'F' as amended, of the Parties' August 1, 1973 Agreement, namely the sum of $150,000.00 less any amounts payable under Group Policy Contract GA-23000 of the Travelers Insurance Company."

OPINION OF BOARD

The Claimant was operating a Model 580C Case Backhoe on a public highway during regular working hours. At the time, he was on duty and under pay.

A tractor trailer collided with the vehicle, and the Claimant was killed.

The instant claim was presented under the so-called "off-track vehicle agreement", which provides that employees who sustain personal injuries or death under certain conditions are entitled to have certain amounts paid to them or their estates. The agreement covers, by its own terms, accidents involving employees who are riding in, boarding or alighting from off-track vehicles authorized by the Carrier, and who are either 1), deadheading under orders or 2), being transported at Carrier expense.

Although it is undisputed that the Claimant was regularly assigned to a certain gang, and he was assigned to operate the backhoe and at the time of the accident he was engaged in moving the machine between work locations, the Carrier denied the claim for a number of reasons. The Carrier points out to us that a backhoe is hardly an "off-

track vehicle." It does not have a license plate for traveling on the highway, and is merely a piece of equipment. Moreover, even if it satisfied the definition of a vehicle, the Claimant was not deadheading, nor was he being transported at Company expense. Rather, the Carrier insists that he was working, and he was not being transported from place to place but, in fact, was the agent that was causing the locomotion of the equipment.

In short, the Carrier insists that it was never the intention of the parties to include this type of an incident within the framework of the agreement in question; but rather, that the Employee's estate's remedy, if any, lies under the Federal Employee Liability Act.

The Carrier also insists that the agreement in question could not include the type of situation here under review; which was recognized by the Union when it submitted a Section 6 Notice to amend the agreement to cover "any job-related accident" including any accident which occurs while an employee is commuting to and/or from his residence or place of business.

The Organization is of a contrary view, and it insists that this claim should be honored. The Organization points out that there are certain exceptions to the agreement provision, but that none of them are present here, and the Carrier seeks to have this Board write an additional exception; which is, of course, beyond our jurisdiction.

Third Division Award 20693 is clear authority that the fact that an individual is the driver of the vehicle does not exclude him, automatically, from coverage, and it is inappropriate to hold that an employee driving a vehicle is not "riding in" or "being transported." Further, the fact that an individual may be working while operating a vehicle does not automatically exclude him from coverage.

We are not able to conclude that the equipment in question was not a vehicle. Certainly, it is a piece of machinery which provides its own locomotion and which is used to move people and things from one place to another, as well as being used for functional work purposes. The fact that it may, or may not, have license plate requirements does not make it any more or less of a vehicle.

The Board is not convinced that the proposal contained in the Section 6 Notice speaks to this particular issue. Rather, it would appear that the Organization sought to expand the coverage in areas much wider than the situation before us.

Finally, this Board is not constituted to consider claims under the FELA, nor are we constituted as experts concerning that piece of legislation. Suffice it to say we are concerned with the "off-track vehicle" agreement, and we are of the view that this Employee satisfied the requirements of the agreement - and was not excluded by any of the expressed terms thereof - and accordingly, the claim should be honored.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

1. Claim sustained.

2. Carrier shall comply with this Award within thirty (30) days of the effective date hereof.

Joseph A. Sickles
Chairman and Neutral Member

J. S. Gibbins
Carrier Member

Hugh G. Harper
Organization Member

2/23/82
DATE