

PUBLIC LAW BOARD NO. 2774

Award No. 126
Case No. 126

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when it assessed Machiner Operator, Mr. B. R. Lawson's personal record with thirty (30) demerits, said act being capricious, arbitrary and in abuse of discretion.
2. That Carrier be required to remove the thirty (30) demerits from Claimant's personal record and that his record be cleared of all charges."

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.

The record indicates that on November 17, 1983, claimant was operating a tie bed scarifier and that piece of equipment struck a tie pusher causing serious injuries to claimant. As a result of the accident, claimant was charged with failing to have the scarifier under control at the point in question resulting in the collision. Based on the determination made following the investigation, claimant was assessed a penalty of thirty demerits.

An evaluation of the transcript of the investigation reveals that there was insufficient evidence to support Carrier's conclusion concerning the charges. The record indicates that there was a hole in the air hose which was related to the brakes and that this mechanical problem had been reported by claimant prior to the trip during which the accident occurred. There was significant evidence that the hole could, indeed, have caused a brake failure as alleged by claimant. On the whole, there was not the type of substantial evidence required to establish

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claimant's guilt. Therefore, since Carrier has not met its burden of establishing that claimant was guilty of the charges, the claim must be sustained.

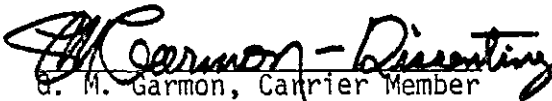
AWARD


Claim sustained.

ORDER

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


I. M. Lieberman, Neutral-Chairman


G. M. Garmon, Carrier Member


C. F. Foote, Employee Member

Chicago, Illinois
April 30, 1985