

PUBLIC LAW BOARD No. 2960

AWARD NO. 51

CASE NO. 88

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of J. L. Heaverlo was without just and sufficient cause (Organization File 2D-3313; Carrier File D-11-24-100).
- (2) Claimant J. L. Heaverlo shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

On August 23, 1982, the Carrier directed the Claimant to attend an investigation on the following charge:

"Your responsibility in connection with accident involving Jackson Tamper #17-3374 on August 20, 1982, at approximately MP 83.4 on the Iowa Falls Sub. and personal injury incurred."

Subsequent to the investigation, the Claimant was dismissed.

The basic facts in this case are not in dispute. The Claimant was operating the machine in question on August 20, 1982. As he neared a highway crossing, he observed a truck approaching the crossing but believed he could enter and clear the crossing before the truck. However, the truck struck the Tamper, derailing it and causing approximately \$4,000 worth of damage and injuring the Claimant.

Several rules were discussed at the investigation, including Rule 1043 which states:

"Work equipment must give right-of-way to all highway traffic. When approaching a highway where view is obstructed, the work equipment must be stopped and the operator must have absolute knowledge that crossing is clear before proceeding. When necessary, a member of the crew must flag the crossing."

It is the opinion of the Board that there can be no question that the Claimant was partially responsible for the accident. The Claimant admitted using ". . . poor judgment. . ." In addition, he made the following statement during the investigation.

"No, I don't have anything I would like to ask anyone here. I would like to say though that from this investigation, without a doubt it appears that I violated more than just one rule . . ."


While the Claimant's responsibility is clear, there is some basis to believe it is mitigated by the speed of the truck.

In regard to whether dismissal is appropriate, the Carrier directs attention to the Claimant's past record. Indeed, the Claimant has received discipline in the past for accidents with equipment. However, the Claimant only received one actual suspension for such offenses. The lack of a progression of more severe punishments, in addition to the mitigating factor mentioned above, convinces us that

the Claimant deserves another chance. The Claimant should realize that this chance is his last opportunity to prove himself an acceptable employee. In view of the foregoing, the Carrier is directed to reinstate the Claimant, however without pay for time lost.

AWARD

Claim sustained to the extent indicated in the Opinion.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Date: 2/16/84