

PUBLIC LAW BOARD NO. 3195

PARTIES) NORFOLK AND WESTERN RAILWAY COMPANY
TO)
DISPUTES) UNITED TRANSPORTATION UNION (T)

STATEMENT OF CLAIM: Request for the reinstatement with pay for all time lost of Roanoke Terminal Yard Brakeman R. W. Palmer, who was dismissed for his alleged failure to take proper precaution when throwing switch at Siding 63, Southern States Cooperative, at approximately 9:20 p.m., May 3, 1932, resulting in his sustaining a personal injury; and being in violation of Operating and Safety Rules as evidenced by his service record (enumerated in the notice of formal investigation).

FINDINGS: This Public Law Board No. 3195 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 employed as a lineman on July 7, 1930 and was transferred from lineman to yard brakeman on November 1, 1930.

During the claimant's tour of duty on May 3, 1932 he sustained a bruised third finger on his right hand when he threw a switch into reverse position to enter an industrial siding on Roanoke Terminal.

The claimant was charged with failure to take proper precautions when throwing the switch and being in violation of the Operating and Safety Rules and jeopardizing the safety of himself and persisting in unsafe practices.

An investigation was held on May 19, 1932. Pursuant to the investigation the Carrier found that the claimant did not heed the safety discussions, that he had a poor safety record and that the evidence establishes that he was accident prone. On that basis the Carrier dismissed the claimant from service.

The Carrier contends that the claimant had sustained four personal injuries since he was first employed and that three of the four injuries resulted in his losing a total of 23 days from his work assignments. The Carrier points up that while the claimant sustained four injuries during that period of time, the five active employees immediately ahead of the claimant on the seniority roster and the five active employees immediately after him on the seniority roster collectively sustained only three injuries.

The Carrier points up that the claimant had been counselled on safety by eight different Carrier supervisors at various times and that the

claimant had received additional training through attendance at rules classes, safety car presentations and audio-visual showings. The Carrier cited Award No. 1 of Public Law Board No. 1606 in support of their position, as well as Award No. 243 of Public Law Board No. 912.

The transcript of record contains 155 pages of testimony. There are also numerous exhibits by the Carrier to support their position. The testimony of all witnesses has been carefully studied.

The evidence establishes that the claimant sustained a minor injury to the ring finger of his right hand when he threw a switch at Siding 53, Southern States Cooperative, which is an industrial side track located within the Roanoke Terminal. The claimant sustained the injury when he threw a switch into reverse position and his finger struck a shunt box which was located close to the switch handle.

The evidence of record indicates that the shunt box was located too close to the switch handle. See the testimony of conductor B. A. Proffitt who testified that there was close clearance between the terminal box or shunt box, and the handle of the switch when it was thrown into the red position. He also testified that when the switch was thrown, it would not clear your fingers.

The evidence further establishes that the shunt box or terminal box had been moved pursuant to this injury. Conductor Proffitt testified that he checked the switch, and the box had been moved over toward the track, and it was now out of the way.

The Organization further points to the fact that the parties have an agreement that an employee's personal service record will not be included in, or referred to, in the hearing or in the transcript of the proceedings of the hearing, and that the agreement was violated herein.

Under this agreement the Carrier may, when the employee is charged with being accident prone, introduce the record as it pertains to previous accidents or injuries, but only this portion of the claimant's personal service record may be included in, or referred to, in the hearing or in the transcript of the proceedings of hearing. However, such record may be attached and submitted to the officer reaching the decision as to the amount of discipline to be assessed. Such should not be considered regarding the guilt of the claimant as to the charge made for the investigation.

In the instant case there is no evidence of negligence on the part of the claimant herein. There is further no evidence of any rule violation by the claimant. The evidence further is clearly insufficient to establish that the claimant was accident prone. Also the evidence does not establish the claimant persists in unsafe practices.

The only act performed by the claimant herein was compliance with instructions to throw a switch. There is no evidence as to any negligence or unsafe method by which the claimant threw the switch involved. On the other hand the evidence establishes that the shunt box was too close to the switch for the switch to be thrown in a safe manner.

On the foregoing basis the Board finds that the claim is valid. The Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired and with pay for time lost. If the parties are unable to ascertain the amount due to the claimant, the Board will reserve jurisdiction to determine the amount.

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

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Organization Member

 - I dissent
Carrier Member

April 8, 1983