

PUBLIC LAW BOARD NO. 3558

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Houston Division Laborer Driver C. J. Prejean for pay for all time lost commencing August 24, 1984, and on a continuing basis until such time as he is allowed to return to service, and with the charge of disqualification removed from his personal record." (MW-84-127)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that 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; and, the parties were given due notice of hearing thereon.

The dispute here at issue concerns a question as to whether Carrier had sufficient just cause to disqualify Claimant from service as a Laborer-Driver.

The disqualification stems from Claimant having struck a bundle of ties while driving a bus at a job site. Although there is some dispute as to the extent of damages, Carrier maintains that as a result of the accident the bus had sustained damage to the right fender of the bus, the step on the side of the bus, and a broken front headlight.

The Carrier maintains that testimony developed at a hearing requested by the Claimant following his disqualification, shows that Claimant had operated the bus in a negligent manner by assuming he could jump some ties with the bus while attempting to go around a bundle of ties that was stacked between tracks. It says that the testimony supported a finding that Claimant had failed to know that the way was clear before moving his bus.

In defense of Claimant, the Organization points to testimony at the "unjust treatment" hearing whereby it was stated that there was only a 15 foot space between tracks and since there were other obstructions along the right of way and the stack of ties was at least 8 feet long, that the bus would have had to be less than 7 foot wide in order to have passed the obstruction.

The Organization also submits that one Carrier witness stated he inspected the bus about ten days prior to the accident here in dispute, but did not know if outside mirrors were missing or if the steps were damaged at that time.

The Organization contends that the disqualification of Claimant, who had five years of service with the Carrier at the time of the accident, with 4-1/2 of those years as a laborer/driver with a good record, is harsh, excessive and unreasonable.

After considering the record, the Board believes the Carrier had the right to hold that Claimant be disqualified from working as a laborer/driver. However, we do not find that the overall record, including Claimant's past record of apparently satisfactory service, supports permanent disqualification. Accordingly, it will be this Board's decision that the disqualification be lifted and that Claimant have the right to exercise his seniority to the first available vacancy as a laborer/driver.

AWARD:

Claim disposed of in accordance with the above Findings.



Robert E. Peterson, Chairman
and Neutral Member



C. B. Coyne
Carrier Member



M. A. Christie
Organization Member

Houston, TX
February 4, 1986