

PUBLIC LAW BOARD NO. 3558

PARTIES)
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
 SOUTHERN PACIFIC TRANSPORTATION COMPANY
 EASTERN LINES

AWARD

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when Dallas Division Machine Operator J. D. Bartek was unjustly suspended from service from December 8, 1986, through December 12, 1986.

2. Claimant Bartek shall now be paid for forty (40) hours at his respective straight time rate of pay and his record cleared of the charge account of him being unjustly suspended." (MW-87-29)

OPINION OF BOARD:

By letter dated December 2, 1986, Claimant, an employee with over fourteen years of service and a Machine Operator since March 2, 1973, was assessed a five day suspension as a result of an accident on November 19, 1986. After hearing on January 8, 1987, and by letter dated January 20, 1987, Claimant was found to have violated Rules 965 and 1041 and the five day suspension was upheld.

On November 19, 1986, Claimant was operating Ballast Regulator 129RH near MP 58.70 near Giddings, Texas pursuant to Foreman E. D. Michalk's instructions to proceed into the clear into Giddings in order to tie up. At 3:25 p.m. Claimant came to a crossing that had crossing signs but no lights or gates. Claimant slowed the regulator but did not stop. Claimant blew the horn at the crossing and proceeded. Claimant's regulator collided with an automobile. No injuries were sustained to either Claimant or the passengers in the car and the ballast regulator was not damaged.

A police report of the incident stated that the driver of the automobile was not paying attention and did not see Claimant's regulator. The driver of the automobile indicated to Foreman Michalk that her brakes did not hold. According to Michalk, flagging protection was not afforded that day due to a lack of manpower.

During his years of service as a Machine Operator, Claimant's record is unblemished. At the hearing, Foreman Michalk described Claimant as a "good all around employee ... conscious of what he is doing." Roadmaster E. L. Hugh testified that he considered Claimant a good, dependable and safety conscious employee.

The relevant Rules state:

"Rule 965. SWITCHES, HIGHWAY CROSSINGS AND RAILROAD CROSSINGS: Operators must use extreme caution when running over switches, frogs, derails and crossings and must flag over crossings where traffic is dense. Highway traffic has the right of way.


Rule 1041. RESPONSIBILITY: They will be held responsible for the safety, care, maintenance and performance of the machines to which they are assigned."


We are unable to find substantial evidence in the record to support the assessment of discipline in this case. Claimant's ballast regulator was struck by an automobile that the record indicates was driven by an individual who was not paying attention and further, the automobile's brakes did not operate correctly. Coupled with the fact that the record demonstrates that flagging is the responsibility of the Foreman, and the Foreman did not provide flagging protection due to a lack of manpower that day, we are unable to find Claimant culpable to a degree to warrant the imposition of discipline. On the other hand, the record demonstrates that Claimant proceeded cautiously in accord with the above rules and could not avoid the collision.


We shall therefore sustain the Claim.

AWARD:

Claim sustained. The suspension shall be rescinded and Claimant shall be compensated for time lost.


Edwin H. Benn, Chairman
and Neutral Member


C. B. Goyne
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
April 29, 1988