

## PUBLIC LAW BOARD NO. 3666

PARTIES Brotherhood of Maintenance of Way Employees  
TO  
DISPUTE: and  
Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM: The claim of James Wallace that he be compensated for the ten (10) days served suspension and that his seniority be reinstated which will qualify him for the position of Backhoe Operator.

**FINDINGS:** By reason of the Agreement entered into by and between the parties on June 13, 1984, and upon all of the evidence in the record, the Board finds that the parties hereto are respectively the employee and the carrier as defined in the Railway Labor Act, as amended, and that it has jurisdiction in this proceeding.

In a letter dated October 27, 1983, Claimant was notified to attend an investigation to determine his responsibility, if any, concerning the "damage to Motorola Building on October 17, 1983, in the vicinity of Norpaul area caused by E & L rented backhoe #83 which (he was) operating". The investigation was held on November 4, 1983, and on November 15, 1983. he was advised that he was suspended for ten (10) days, that he was restricted from the position of Backhoe Operator and that his name was removed from the seniority roster for that position. He actually served his suspension from November 17 through November 27, 1983.

The record shows that on October 17, 1983, the Claimant was operating Backhoe No. 83 in the vicinity of the Norpaul Yard Office, that he picked up a bundle of five (5) or six (6) switch ties with the bucket, that he shifted into reverse, that some of the ties slid out of the bundle and struck the Motorola warehouse, damaging several steel building panels. The replacement of the panels, the board-up service and security guard totaled \$2,200.00.

When the Claimant shifted the backhoe into reverse, it was necessary for him to maneuver the backhoe between the Motorola warehouse, a line pole and the railroad track. With five (5) or six (6) switch ties, which were 12 or 13 feet long, the Claimant should have used greater care and caution in manipulating his backhoe. His work record in operating a backhoe is not one of commendation. On May 2, 1983, while operating backhoe No. 83, he tipped it over damaging the backhoe and injuring himself. On September 14, 1983, while again operating backhoe No. 83, he struck and damaged a ladder on the track signal causing damage estimated at \$300.00.

For all these reasons, the assessment of the ten (10) day actual suspension was fair, proper and justified. But the record does not justify the removal of his name from the seniority roster which disqualifies him from operating a backhoe for the balance of his tenure with the Carrier.

His operation of the backhoe on October 17, 1983, as well as on May 2, 1983 and September 14, 1983, may have been less than perfect, but not so extremely negligent that a discipline of work restriction was justified. The suspension discipline has certainly served its purpose to convey to the Claimant the necessity of care in operating a backhoe. A penalty of total restriction from this work for all time is extremely excessive.

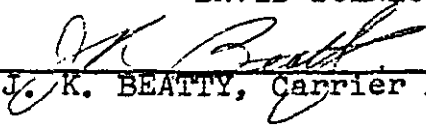
It is the finding of this Board that the Claimant should be reinstated as a backhoe operator with full seniority preserved and unimpaired, but with no compensation for any lost earnings, if any, resulting from his disqualification.

#### AWARD

1. Claim for compensation for the ten (10) days Claimant served as a result of his suspension is denied.

2. Claim for reinstatement of Claimant's seniority rights to the position of backhoe operator is sustained in accordance with the findings.

  
DAVID DOLNICK, Chairman and Neutral Member

  
J. K. BEATTY, Carrier Member

  
WILLIAM E. LA RUE, Employee Member

DATED: Jan. 2, 1985.