

PUBLIC LAW BOARD NO. 4225

Claimant - R. D. Sawyer
Award No. 1

Case No. 1

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad

STATEMENT
OF CLAIM

That the Carrier's decision to suspend Claimant from its service for a period of fifteen (15) days, plus complete five (5) days of A.D.E.P.T., was excessive, unduly harsh and in abuse of discretion, and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

The Claimant served as a Track Inspector at the time of the incident. On January 4, 1988, the Claimant was hrrailing in Company vehicle 1915-00467 through a grade crossing at East

Catlett Road. Despite his attempt, he was unable to stop short of the crossing, slid 200 feet and collided with a private vehicle. Both vehicles went into the ditch. Consequently, he was charged with violating the following rules:

General Notice Part C: Rules cannot be written to cover every possible situation that may arise in connection with each and every individual task connected with your work. Therefore, certain definite responsibilities rest upon you, mainly Part C: protection of the public. Suggestions from the employees intended to promote safety economy, and improve service are solicited and will receive consideration.

General Rule A: Safety is of the first importance in the discharge of duty.

Obedience to the rules is essential to safety and to remaining in service.

The service demands the faithful, intelligent and courteous discharge of duty.

General Rule B: Employees whose duties are prescribed by these rules must have a copy available for reference while on duty.

Employees whose duties are affected by the timetable and/or special instructions must have a current copy immediately available for reference while on duty.

Employees must be familiar with and obey all rules and instructions, and must attend required classes.

If in doubt as to the meaning of any rule or instruction, employees must apply to their supervisor for an explanation.

Rules must be issued, cancelled or modified by general order, timetable or special instructions.

When authorized by the superintendent, general orders or special instructions may be cancelled, modified, or issued by train

order Form Q or track bulletin.

Effective April 27, 1986

Rule 4000: Safe Course: In case of doubt or uncertainty the safe course must be taken: in all cases, the safest available methods must be followed.

Rule 1419: Maximum Speeds: The maximum speed for operation on track is as follows, with reduction as necessary to ensure safety:

hy-rail inspection vehicles.....	45
MPH	
Crew-Cab pickups with hy-rail wheels.....	30
MPH	
Roadway equipment.....	30
MPH	
One-man motor cars.....	30
MPH	
Gang motor cars without trailers.....	25
MPH	
Gang motor cars with push cars trailers attached.....	20
MPH	

Hy-rail vehicles with GVW 15,000 pounds and greater must not exceed 25 MPH on tangent track.

Where maximum freight train speed is lower, it will govern.

Speeds should be reduced on curves and branch lines depending upon conditions.

At night, speed must be reduced as conditions require.

When rails are slippery due to frost or other causes, a greater distance is required to stop track car, and operator must take this into consideration.

Speed of cars must be such that track car can be stopped in less than one-half the distance track is seen to be clear.

Rule 1424: Grade Crossings: Track cars and on-track equipment must approach all grade crossings prepared to stop. If necessary, a man must flag the crossing to protect

movement of track car and on-track equipment.

Rule 1450: Track Car Rules: When hy-rail or roadway equipment occupies track, track car rules will apply.

Following a formal investigation held January 15, 1988, the Employee was suspended from service for fifteen (15) days and required to complete five (5) days of ADEPT class.

According to the Claimant's testimony, he knew the shunts on his hy-rail were not working properly and not engaged. While he may have taken this into consideration, it is obvious he did not properly assess the speed at which he should have been traveling. His failure to do so resulted in a costly accident. Beyond this, it could have created great liability for his Employer. Even more importantly, his actions could have caused serious injury to the individual(s) in the private car. However, the Claimant's failure in this regard was more a matter of bad judgment than a total disregard for safety. And unfortunately, as in this case, our mistakes are usually not brought to light until something negative happens.

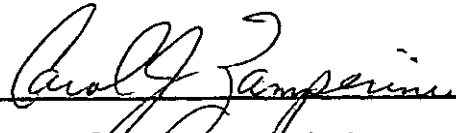
A review of the Employee's record, supports the Board's feeling that the Employee believed he was taking the necessary steps to operate safely. He has sixteen (16) years of service and an exemplary record. There is no indication the Claimant has ever ignored his responsibility to the Carrier. On the day of the accident, it is unlikely he was acting in any way contrary to the pattern of behavior he has demonstrated during his tenure. One of the things taken into consideration by this

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Board in determining the appropriateness of the penalty, is whether or not the Carrier utilized progressive discipline in its treatment of an employee. The penalty issued should not only take into consideration the type of offense and the intent of the employee, but also the employee's tenure and employment record. For this reason, the Board feels a lesser penalty would have the same rehabilitative effect as a fifteen (15) day suspension.

AWARD

The Claim is granted to the extent the fifteen (15) day suspension and five (5) days of ADEPT are to be reduced to a five (5) day suspension and five (5) days ADEPT. The Employee is to be reimbursed for any wages and benefits lost in excess of this amount.



Carol J. Zamperini
Neutral

Submitted:

June 14, 1989
Denver, Colorado