

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
TO THE) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to suspend Southern Region Machine Operator K. J. Jackson from service, for a period of 120 days beginning May 21, 1992, was unjust.

Accordingly, Carrier should now be required to expunge the 120 (days) suspension from the claimant's record, reinstate his machine operator's rights and compensate him for all wages lost from May 21, 1992 forward.

FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

In this dispute Southern Region Machine Operator K. J. Jackson (the "Claimant") was notified to attend a formal investigation on May 21, 1992, concerning a collision of track machines between Mile Post 89 and Mile Post 90, Conroe Subdivision, on April 22, 1992, while he was employed as a machine operator, in possible violation of Rules A, B, I, and 5903 of the Carrier's Safety and General Rules for All Employees, and Rule 962, 963 and 964 of the Rules and Instructions for Maintenance of Way and Structures. As a result of the investigation the Carrier determined that the Claimant violated the cited rules. The Carrier then revoked the Claimant's machine operator's rights and assessed a 120-day suspension.

The record shows that on April 22, 1992, the Claimant was operating a spike reclaimer in Tie Gang No. 31. While traveling to a tie up point at the end of the day, the gang was required to move over the rail which had been worked on that day, and the track was oily. As the consist of four machines traveled around a corner, the

gang encountered a sun kink in the track, requiring the gang to slow down almost to a stop. The Claimant was third in line, and C. W. Williams was operating the anchor spreader directly in front of the Claimant. Machine Operator W. J. Bell was following the machine operated by the Claimant.

Williams testified at the formal investigation that he slowed almost to a stop to proceed over the sun kink in the rail. As he negotiated the kink and started to accelerate, the Claimant's machine struck Williams' anchor spreader from behind. Williams further testified that there was oil on the track which had to be taken into consideration when moving over the rail.

Bell testified that he was traveling approximately between 10 and 15 mph and between 350 and 390 feet, 2 1/2 to 3 pole lengths, behind the Claimant's machine. Although he did not see the actual collision ahead, he was able to stop his machine a safe distance short of the collision. Bell confirmed that the Carrier's rules required him to operate his machine between 350 and 390 feet behind the Claimant's machine.

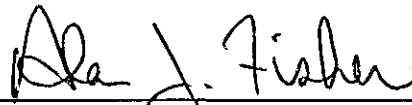
The Claimant testified that he was traveling at a speed less than 20 mph and 500 feet behind Williams' machine. He stated that he was only 35 to 40 feet behind the anchor spreader when he determined his machine was about to overtake the spreader. He applied the brakes immediately and applied the parking brake in his attempt to avoid an accident. During his testimony the Claimant also acknowledged that operating a machine on rail that is oily required greater distances to start and stop a machine.

The Carrier argued in its brief to the Board that the facts of the case supported the conclusion that the Claimant operated his machine in an improper and unsafe manner. Under the circumstances of the case the Claimant was either traveling too close behind the anchor spreader or traveling too fast for the conditions of the rail. In either case the Claimant violated the cited rules and he must be held accountable for the collision.

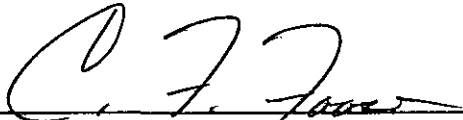
The Organization argued that the Claimant was an inexperienced operator on the machine and was left on his own to learn its operations by trial and error. The Carrier must accept some responsibility for the incident because supervision was not on hand at all times. Further, the Carrier failed to consider the contributing factors, i.e., the rail was slick with oil and the sun kink was located in a curve, and thus, restricting vision, when it assessed the discipline to the Claimant. Accordingly, the Carrier failed to meet its burden of proof.

After reviewing the record, the Board finds that the Carrier met its burden of proof and established that the Claimant violated the cited rules. The Claimant was involved in a collision between track machines, and he did not maintain a safe distance between machines as required by the established rules. However, the Board believes that the discipline assessed the Claimant was excessive under the circumstances of this case. There is a question whether the Claimant had sufficient training and experience to operate the machine without the assistance of a qualified operator. Accordingly, the Board finds that the suspension will be reduced to sixty (60) days, and the Claimant will be reimbursed for his lost wages.

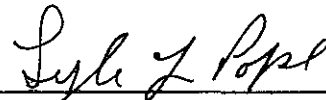
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Kyle L. Pope
Carrier Member

Dated: October 18, 1993
Schaumburg, Illinois