

Award No. 21
Case No. 21

PUBLIC LAW BOARD NO. 4244

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO) AND
DISPUTE) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Carrier's decision to disqualify Kansas City Division Group 7, Class 3 Operator G.V. Louderback, Jr. from Tie Tamper machine and assessed 20 demerits was improper and unjust.

Accordingly, Carrier should be required to allow Claimant Louderback to exercise seniority on the Tie Tamper and remove the 20 demerits from his record.

FINDINGS: This Public Law Board No. 4244 (the "Board") 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. Further, this Board has jurisdiction over the parties and the subject matter involved.

In this dispute Kansas City Division Machine Operator G.V. Louderback (the "Claimant") was notified to attend a formal investigation to develop the facts and place responsibility, if any, in connection with his possible violation of Rules 1, 2 and 16 of the Carrier's General Rules for the Guidance of Employees, 1978, Form 2626 Std., and Rules A, B and 1041 of Rules Maintenance of Way and Structures, Form 1015 Std., when he allegedly released the park brake on AT 4726, a tie tamper, while Work Equipment Maintainer M. Riley was working under the machine. The matter under investigation occurred on July 1, 1987 and the Claimant was notified on July 6, 1987 that he was disqualified from operating the machine pending the investigation. The formal investigation was postponed at the Claimant's request and eventually held on November 30, 1987. Pursuant to the investigation the disqualification was upheld and the Claimant was assessed twenty demerits for violation of Rule 1041 of Rules Maintenance of Way Structures, and Rules 1 and 16 of the Carrier's General Rules for the Guidance of Employees.

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The record shows that on July 6, 1987, the Claimant was notified that he was disqualified from operating the Tie Tamper machine, a Group 7, Class 3 machine, because of his careless operation of the machine on June 2 and July 1, 1987. On June 2, the Claimant backed over a switch stand damaging the machine and the switch stand. On July 1, he released the parking brake on the machine while Work Equipment Maintainer M. Riley was under the machine checking for an air leak in the braking system.

On July 13, 1987, the Carrier received a letter from the Claimant requesting an investigation regarding his disqualification. Due to postponements requested by the Claimant, the investigation was held on November 30, 1987.

At the formal investigation Riley testified that on July 1, 1987, he was instructed to repair an air leak on the Claimant's machine. Riley stated that he began the repair by instructing the Claimant to start the machine and build the air. He further instructed the Claimant not to move the machine because he would be under the rear of the machine. However, while under the machine, Riley testified that he could feel the brakes release. Riley scrambled out from under the machine as it began to move. Riley and Assistant Work Equipment Supervisor C.R. Greenhill testified that the machine moved approximately three feet. If Riley had not been able to get out from under the machine, it would have rolled over him.

Greenhill testified that the Claimant was instructed to start the machine and set the parking brakes. He verified that Riley instructed the Claimant not to move the machine because Riley was going to crawl under it. While investigating the problem, Greenhill stated that he told the Claimant to climb back up and shut the machine off. At that point, with Riley under the machine, the machine started to move. Given the machine's Fail Safe Brake system, it was Greenhill's opinion that the Claimant had to have released the brake system when Riley was under the machine.

The Claimant admitted that he released the parking brake on the machine but he claimed that he informed Riley and Greenhill that he was going to do so to assist with the repair. He further testified that the machine did not move as alleged and that neither man was under the machine when he released the Fail Safe Brake.

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The Organization argued before the Board that the Carrier's decision to disqualify the Claimant and assess his personal record with 20 demerits was excessive discipline and was not supported by the Carrier's rules. Moreover, the Carrier's investigation did not establish that the Claimant was unqualified to operate the tie tamper. The Organization further protested that although the Claimant was charged with only one matter for investigation, the Claimant's disqualification was based on two separate incidents.

The Board has carefully read and considered all the testimony and evidence of record. The Board finds that the Carrier conducted a fair and impartial investigation. The Board further finds that although a conflict in testimony existed concerning the conversations between the Claimant, Riley and Greenhill, and whether Riley was under the machine when the brakes were released, this Board will not substitute its judgment on this issue for that of the Hearing Officer. The Board's position is consistent with numerous Public Law Board awards.

In reviewing this case, the Board finds that the notice of investigation concerned the issues of whether the Claimant was qualified to operate the Tie Tamper machine and referred to the Claimant's possible violation of various safety rules. Thus, the Carrier had the burden to prove two charges: (1) that the Claimant was not a qualified Group 7, Class 3 Tie Tamper machine operator; and (2) that he violated the rules cited.

At the investigation the Carrier established that the Claimant released the brakes on the machine and jeopardized Riley's safety as he worked on the machine. The Claimant's actions clearly endangered the equipment maintainer's life and constituted the cited safety rules violation. However, the Carrier did not develop the issue of the Claimant's qualifications. The Carrier failed to meet its burden of proof to establish conclusively that the Claimant was not qualified to operate the tie tamper machine. Accordingly, the assessed discipline of twenty demerits for safety rules violation was appropriate but the disqualification was not. Thus, the disqualification shall be removed and the Claimant shall be entitled to exercise his seniority and perform service as a Tie Tamper operator.

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AWARD: Claim sustained per above findings.

Alan J. Fisher
Alan J. Fisher, Chairman
and Neutral Member

C. F. Foose
Clarence F. Foose
Organization Member

Kyle L. Pope
Kyle L. Pope
Carrier Member

Dated: September 21, 1988, Chicago, Illinois