

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

JUL 19 1988
VICE PRESIDENT
LABOR DIVISION

STATEMENT OF CLAIM:

(1) The discipline assessed (21 day suspension) Welder Helper S. H. Rocha for alleged violation of company rules as indicated in L. D. Smith's letter of April 8, 1988 was capricious, arbitrary, unwarranted and invalid.

(2) The claimant's record shall be cleared of the discipline referred to in Part (1) hereof, and he shall be compensated for all time lost.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation on March 22, 1988 to develop the facts and determine responsibility on charges that he was responsible for setting Rail Grinder No. 54 on No. 1 Main Line which resulted in the Rail Grinder being struck by an approaching train. The claimant was charged with the possible violation of General Rules A, B, K, Rule 1411 and Rule 1595 and General Instructions No. 1.5 as contained in Form 7913.

The claimant was working as a Lead Track Welder working under Track and Time Limits on No. 2 Main Line, CP 378, Sidney Subdivision. The Carrier offered the claimant a 15 day suspension. Mr. Burnett waived the hearing and accepted the discipline.

Manager of Track Maintenance R. DeSantiago testified that he was called and advised that the Rail Grinder had been hit at CP 378. He stated that when he arrived he found Mr. Burnett and claimant at that location, and they stated they were grinding on No. 2 frog which is the east frog on No. 1 track at CP 378.

Mr. DeSantiago further stated that Mr. Burnett advised him that he had his permit on No. 2 track. That permit was placed into evidence. He stated that he looked at the permit, and it was for No. 2 track. He stated that Mr. Burnett said he had set the frog grinder on No. 2 track to push it through the turnout to grind on No. 1 frog. He stated that the grinder was pretty much totaled out.

The claimant testified he was working as the welder helper and had not seen the permit prior to the time that Mr. Burnett gave it to Mr. DeSantiago. He testified that he knew Mr. Burnett was to obtain a permit on No. 1 Track. He also testified that he normally did not see a copy of the permit, but that it was a part of his responsibility to see a copy of the permit. He stated that before the accident he did not feel obligated to see the permit.

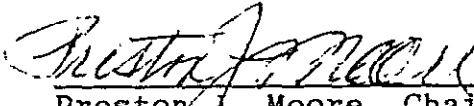
The claimant testified he knew the lead grinder had obtained a permit on No. 1 Track. He also stated that when they set the grinder off, the lead welder set it off on No. 2 Track. He said that when they set the grinder off on No. 2 Track, he did not know for sure what track the permit was on.

The Board has reviewed all the evidence and testimony of record. It appears the claimant bears some responsibility, but he is not guilty of all the charges as alleged. Under the circumstances herein seven days suspension is the maximum which could be assessed. The Carrier is directed to pay the claimant for the balance of the time suspended.

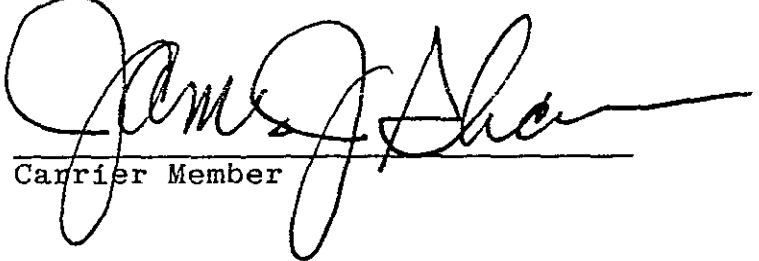
AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

DATED: August 1, 1988


Preston J. Moore, Chairman


Union Member


Carrier Member