

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM:

(1) The discipline (30 day suspension) assessed System Gang 9012 Bus Operator D. C. Rudat for alleged violation of various Company rules as indicated in Mr. B. M. Brown's letter of May 5, 1988 was arbitrary, capricious and unwarranted.

(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 April 18, 1988 to develop the facts and determine his responsibility for his alleged unsafe operation of Gang Bus 62232 over the railroad crossing at Walcott, Wyoming on March 21, 1988 which resulted in a "near miss report" being filed by the Engineer of 9114 West.

The transcript contains 83 pages of testimony which has been considered and studied by the Board.

The Carrier received a report that the conductor and engineer on KLLB6-19 narrowly missed striking a bus which was transporting workers. Perhaps it should be noted that "9114 West" is the clearance for the train movement. KLLB6-19 is the symbol for the entire train.

The engineer on Train KLLB6-19 on the date in question was R. L. Dunivent. He testified they were approaching Walcott at 37 miles per hour, and there was a blue Chevy S-10 that went across the tracks at the crossing, and a bus followed them across the tracks.

Engineer Dunivent further testified that the bus went through with the flashing lights on. He stated he was not certain whether the lights were flashing when the blue Chevy truck went through, but he was sure the lights were flashing when the bus went through. He testified that he knew this was the bus the gangs were on. He testified the bus did not stop nor slow down.

Conductor Frank Conde, who was on the train in question, testified that he observed the Company bus ignore a red flashing signal at the crossing at MP 662, Walcott. He stated that in his judgment the bus did not clear by more than a few feet as he could see it from his side of the engine. He testified the bus did not stop at the crossing.

Conductor Conde further testified that he knew what Carbon County busses looked like, and further that they used to haul children there but not any more. He stated he hadn't seen a school bus at that location for several years. He stated the bus in question was definitely a Union Pacific bus. He testified he did not know who was driving the bus.

Special Agent Cain testified that he received a call from Mr. Hampton, and as a result of that call, he proceeded to Walcott at approximately 1430 hours or 2:30 p.m., and at that time he did a survey. He requested permission to talk to the people who were involved in the alleged near miss at Walcott Junction.

Agent Cain stated that when they returned to the office, he took ten written statements from employees who were on the bus, plus statements from the claimant and assistant foreman. He testified some of the statements he received stated the claimant came to a stop and others said he did not. He testified that the claimant stated he was the driver of the bus on the date in question.

The transcript contains the statements of the passengers in the bus, as well as the claimant who was driving the bus. All of the statements have been reviewed, as well as the testimony therein.

There is considerable conflicting testimony. Most of the passengers testified the claimant stopped and they did not believe it was dangerous. Several passengers testified the claimant slowed down, but the lights were flashing before he started across.

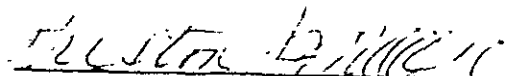
The claimant himself testified that he stopped, that the lights were not flashing, and the vehicle in front of him was not a blue Chevy S-10 but was a Mitsubishi.


There also was a great conflict in testimony concerning the distance the train was from the crossing.


The Board has reviewed all of the testimony and carefully considered all of the evidence presented. It is sufficient to say there is adequate reason for the Carrier to find that the claimant was guilty as charged. There is no justification for setting the discipline aside.

AWARD: Claim denied.

DATED: August 1, 1988


Preston J. Moore, Chairman


Union Member


Carrier Member