

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM:

1. The discipline (120 day suspension) assessed Section Foreman W. E. Edwards for alleged violation of various company rules, as indicated in Mr. B. M. Brown's letter of March 17, 1989, was simply too severe in light of the fact that Mr. Edwards' personal record covering a 23 year career was blemish free until this incident.

2. The 120 day suspension must be set aside and the claimant must be returned to service immediately and 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 February 28, 1989 at Rawlins, Wyoming. The investigation was held to determine the facts and place the responsibility of the claimant W. E. Edwards allegedly unsafely operating Company vehicle at Mile Post 769.75 at approximately 1:30 p.m. on January 20, 1989.

At the outset of the investigation the Union contended that the claimant could not prepare a proper defense because the letter of charges was not precise in accordance with Article 48(C) of the Agreement.

R. E. Loftin, Manager Track Maintenance, testified the claimant contacted him on Saturday morning, January 21, advising that one of his men had been hurt on the job on January 20.

The claimant testified that they were inspecting track and found a plate out of the track and backed up to the located at Mile Post 769.75 when Mr. Madrid got out of the truck to see if he could put the tie plate back in the track. The claimant then testified that Mr. Madrid apparently could not get the tie plate back in the track so he came back to the truck to get more tools.

The claimant further testified that Mr. Madrid again returned to the truck to get some more tools and told him he needed some help

so he got out of the truck to give him a hand. The claimant stated he had left the truck in reverse gear with his foot on the clutch, but he thought he had it in neutral. He testified that when he got out of the truck and took his foot off the clutch, the truck jumped backward, striking Mr. Madrid.

The claimant testified that when he went to the back of the truck, Mr. Madrid was sitting on the ground but he did not think he had an injury, so he did not report it right away. He also testified that Mr. Madrid appeared to be Okay and that he told him he was Okay.

The Union objected to such being hearsay testimony, but such is admissible. This testimony is admissible when such testimony involves a claimant's statements. Such does not constitute hearsay.

The claimant testified that he thought the work which needed to be done was a one man operation so he remained in the truck watching for trains in both directions. He stated he reached for his hard hat, and his foot slipped off the clutch. He testified he forgot the truck was running and was in reverse gear.

The claimant stated he felt one hundred percent responsible for the incident which resulted in the injury to Mr. Madrid.

Mr. Madrid told the claimant he was not injured, and he did not wish to see a doctor and continued to perform his normal work for the rest of the day.

The Board has studied and reviewed all the testimony and evidence of record. There is no question but that the claimant was guilty as charged. The only issue remaining before the Board is whether or not the discipline assessed is harsh or unjust.

The claimant has almost 23 years of service with a very good discipline record. 120 days suspension is an extreme penalty to an employee. This referee might, if he were the deciding officer, only assess 60 days of suspension. However, that is not the prerogative of the referee.

The referee does find that any discipline assessed in excess of 90 days is too severe. On that basis the Carrier is instructed to pay the claimant for the last 30 days he was 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.


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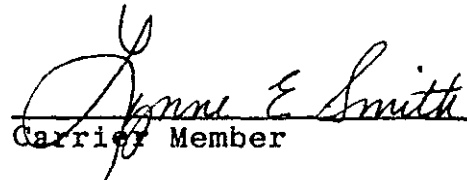
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Dated: July 14, 1989.


Preston J. Moore, Chairman


Union Member


Carrier Member