

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM:

(1) The discipline assessed Bridge Welder J. J. Williams for alleged violation of various company rules as indicated in Mr. Tholen's letter of July 24, 1989 is arbitrary, capricious and unwarranted.

(2) The Carrier failed to furnish an accurate hearing transcript as on Page 10, Line 17 thereof Representative R. L. Cooper did not say "This is a flagrant violation . . ." Instead Mr. Cooper indicated "This is not a flagrant violation . . ."

(3) In light of (1) and (2) above the claimant's record shall be cleared of the discipline referred to in Part (1) and he shall be returned to service 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 in Sidney, Nebraska on July 7, 1989 to develop the facts and to determine the responsibility, if any, in connection with charges that he allegedly broke out the windshield of UPRR Truck No. 1915-06956 at Potter, Nebraska at approximately 10:00 a.m. on June 26, 1989 indicating possible violation of Safety, Radio and General Rules for All Employees effective April 28, 1985.

Neil Anderson, Manager Bridge/Building Maintenance on the Cheyenne Service Unit from North Platte to Denver, testified that claimant was under his jurisdiction. He testified he was told the claimant had taken his hard hat and busted out the windshield, or cracked or broke the windshield of Company Truck 1915-06956.

Manager Anderson testified that he inspected the windshield and talked to the claimant, and the claimant told him he was playing with his hard hat, and it came off and broke the window. He testified the claimant admitted breaking the windshield. He also stated the claimant advised him he was unhappy with the relationship between himself and Rich Lamb.

Mr. Anderson also stated that in his opinion it would take a great deal of force to break a windshield. He stated the windshield was broken to the point that DOT regulations would require that it be replaced.

The claimant testified he did not tell Mr. Anderson he was horsing around with his hard hat, but he could understand why Mr. Anderson reached the conclusion that it was horseplay. The claimant testified the window was cracked and not broken, that he reported the matter promptly and offered to pay for the damage.

After reviewing all the testimony and evidence of record, it is the opinion of the Board that permanent dismissal is harsh, arbitrary and unjust under the circumstances herein. The Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost.

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.


Preston J. Moore, Chairman


Union Member

November 28, 1989 
Carrier Member