

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM:

(1) The dismissal assessed District Truck Driver D. L. Johnson for alleged violation of various company rules as indicated in D. D. Tholen's letter of November 1, 1989 is arbitrary, capricious and unwarranted.

(2) Provided the sustaining of charges was appropriate, which it was not, the discipline assessed was much too severe.

(3) The Carrier failed to furnish an accurate hearing transcript in that:

(a) the two (2) questions transcribed at the bottom of Page 11 were not raised by Representative Cooper as shown and instead were asked by claimant Johnson;

(b) the "54,500" volts mentioned in Answer #3 is incorrect as Mr. Bill Grizzard testified it was "34,500" volts.

(4) In light of (1) and (2) and (3) above the claimant's record must be cleared of the discipline referred to in Part (1) and he shall be reinstated with his seniority and all other rights restored unimpaired, including those specified in Article V, Section 5 of the December 1, 1981 National Agreement, and he shall be made whole for all losses sustained in this regard.

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 Cheyenne, Wyoming on October 23, 1989 to develop the facts in connection with charges that he allegedly operated equipment in an unsafe manner on October 10, 1989 when he swung the boom up against a 34,000 volt wire which caused over \$5,000 worth of damage to Geico Vehicle 1915-61381 and possible injury to himself, indicating possible violation of General Notice A and C, General Rules A, B, I, K and 609, Safety Instructions General Rules 4000, 4001, 4110, 4110-C and 4111 of Safety, Radio and General Rules for all Employees, Form 7908.

The investigation was held on October 25, 1989. Pursuant to the investigation the claimant was dismissed from the service by a

letter dated November 1, 1989. The reason for the two day delay in holding the investigation was because the claimant's representative had requested a postponement.

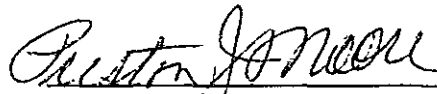
The claimant testified he had worked in that area before and believed it was not safe place for the unloading ramp to be located. He also testified he attempted to radio his immediate supervisor, Rodney Samuelson, to get help unloading the ramp. He testified he was not able to reach his supervisor by radio. The claimant testified he talked to his former supervisor and suggested spotting the cars somewhere away from those wires.

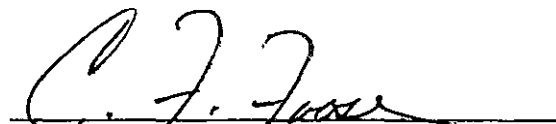
The evidence establishes that the claimant was aware this was an unsafe location but proceeded to perform the job without help. The evidence further established that he was aware of the wires. The evidence is sufficient for the Carrier to find the claimant was guilty of negligence.

However, there is some mitigation in that the claimant attempted to get help. Consequently the Board finds that the discipline assessed is too severe. The Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost.

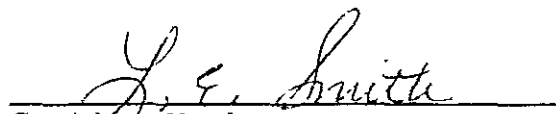
AWARD: Claim sustained as per above.

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

January 2, 1990


Carrier Member