

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM:

(1) The 180-day suspension assessed Sectionman G. S. Hunt for alleged violation of various company rules, as indicated in Mr. G. D. Altenburg's letter of October 11, 1991, is arbitrary, capricious and totally unwarranted.

(2) In light of (1) above, the claimant's record shall be cleared of the discipline referred to above, 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 September 16, 1991 at Nampa, Idaho to develop the facts and determine his responsibility, if any, in connection with an incident which occurred on August 23, 1991, near Mile Post 60.95, when he fell asleep while patrolling in Vehicle No. 1915-62501, behind Union Pacific 2024 North, colliding with caboose and causing possible injury to himself and other employee in hy-rail, and causing damage to Company property, which indicated a violation of General Notice (a) and (b) and General Rules A, B, and I, and Rules 602, 607(1), 607(2) and 4045 of Form 7908, Safety, Radio and General Rules for All Employees, as revised October, 1989, and Rules 1420, 1425 and 1450 as contained in the Union Pacific Railroad Company Maintenance of Way Rules, effective April 1, 1988.

The investigation was postponed until September 30, 1991. Second Vice Chairman J. V. Larsen and D. A. White, Local Chairman, BMWE, appeared at the investigation and represented the claimant.

R. A. Woods, Manager of Track Maintenance at Nampa, Idaho, testified he was called at approximately 1:40 p.m. on August 23, 1991 and advised the claimant had run into the back of the train. He testified that when he arrived at the scene of the incident, he commenced his investigation and found that the claimant had been operating the hy-rail unit 62501 behind Union Pacific 2024 North, which had a track warrant number 460, and the claimant had a track warrant number 481, which had a line 9, which gave him the authority to follow the train to do his inspection.

Track Maintenance Manager Woods testified that he asked the claimant how he and Mr. Hunt could have run into the back of the train and both employees stated they had fallen asleep. He testified that the claimant said they were going about 15 miles per hour at the time they fell asleep.

Mr. Woods further testified he sent the car to the section to get an estimate on repairs, and he was advised that the cost for repairs would exceed the value of the vehicle itself.

Mr. Woods further testified he took the claimant and Mr. Hunt to the hospital, and both employees had minor injuries which required some treatment.

Mr. Woods testified that the windows were down on the vehicle when he arrived at the scene, and he had the exhaust system checked, which was found to be in fine condition. He also testified there was nothing on the hy-rail which would induce drowsiness.

The claimant testified that he had the rear windows up, but he had the passenger and driver windows down, and the wing windows were cocked open. He also stated he had gas and grease on the vehicle which may have caused the drowsiness. The claimant stated he had hauled gas before but had never had it in the compartment with him. He stated they had hauled gas and grease like that before.

Employee Boren testified there were some fumes in the vehicle at all times. Both the claimant and Mr. Hunt stated they believed the gas fumes and stuff in the back may have caused their sleepiness that day.

The Union contends both men were placed in an unsafe situation by being assigned a vehicle which should not carry track grease or gasoline. The Union further contends the Carrier is in violation of the Agreement by removing the employees from service before the hearing was held. The Union further contends that the personal records of the employees should not be entered into the hearing proceedings.

The Board has studied the entire transcript of record and all of the evidence submitted. The evidence is insufficient to establish that the track grease or gasoline fumes, if any, were the cause of the claimant falling asleep.

As many Boards have held, personal records of an employee may be introduced into an investigation but such may not be considered in determining the guilt of employees. The only reason for introducing a personal record of an employee is to determine the degree of discipline to be assessed.

Further the Board finds that under the circumstances herein, there is no violation of the Agreement when the Carrier holds the employee out of service pending an investigation.

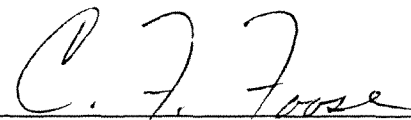
Although this referee is adverse to long suspensions, it is not in the authority of the referee to determine whether extended suspensions are proper. The only authority granted to the referee is to determine if the discipline assessed is harsh, severe or unjust. Perhaps it should be pointed out that it is to the detriment of the Carrier, as well as to the employee, to assess long periods of discipline.

Under the circumstances herein the Board has no authority to set the discipline aside.

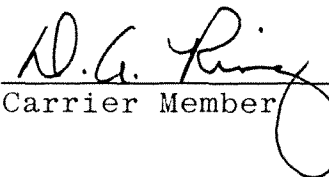
AWARD: Claim denied.



Preston J. Moore, Chairman



Union Member



Carrier Member