

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM:

(1) The fifteen (15) day suspension assessed B&B Foreman W. L. Kernan for alleged violation of various company rules as indicated in G. Edwards' letter of January 15, 1992, is arbitrary, capricious and unwarranted.

(2) In light of (1) above, the claimant's record must be cleared of the discipline referred to above, and he must be reimbursed 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 charged with allowing a hand push-cart to foul the track which was subsequently hit by Southern Pacific Unit No. 2618, indicating a possible violation of Rules A, I, K, 10F and 99E of the current BMW Rule Book.

The claimant was notified to attend an investigation in Portland, Oregon on December 4, 1991. Pursuant to the investigation claimant was assessed 15 days actual suspension. The Union filed a claim in behalf of Claimant W. L. Kernan which is now before the System Board of Adjustment for a decision.

The Board has carefully examined the 68 pages contained in the transcript and the exhibits which were submitted by the parties.

Special Agent Tom Morrison testified he was called by Bridge and Building Foreman Wayne Kernan to meet him at the Steel Bridge. Mr. Morrison read his statement into the record wherein he stated he talked to claimant Kernan who said he thought kids or transients put the rail cart back on the tracks.

Agent Morrison further stated that after interviewing the crew, he determined that claimant Foreman Kernan and his crew forgot to take the cart off the track when they went below the main line onto the bridge pier. Mr. Morrison also testified that Foreman Kernan stated he assumed one of his crewmembers had removed the cart from the track.

Agent Morrison testified that when the Southern Pacific unit struck the push cart, there was resulting damage of approximately \$350.00 to the push cart.

J. M. Jessen, Manager of Bridge Maintenance, Engineering Services, testified that the claimant had given the track back for service and had neglected to remove the push cart from the track. This witness also testified it was the claimant's responsibility to protect all bridge work; track protection was part of his foreman duties.

Mr. Jessen conceded the claimant was working with two men less than normal on the date in question but stated this should not have been a problem in providing protection. He further testified that if the contractor needed assistance, the claimant was to provide that assistance.

The Union pointed out that since the claimant was short of employees on his crew, he would not have been able to assist the contractor and have a flagman on both ends.

Witness Jessen testified that if the claimant was unable to control traffic with the Bridge Tender, he should have flagged it. He also testified the claimant stated to him that he "assumed that it was cleared and did not look or ask any other gang member before he gave the track back."

G. G. Perrenoid, Bridge and Building Carpenter, testified he was assigned to duties under the jurisdiction of the claimant while on duty. He testified that it was necessary for him to remove the cart from the track and later return the cart to the track.

The claimant testified he instructed Greg Perrenoid to take the cart off the track after the old shaft was loaded on the cart. He stated he gave the bridge back to Chuck, the Drawbridge Operator. Claimant Kernan also testified he did not know why the tool cart was on the track.

The claimant stated that when he heard the rattle of the tool cart being struck by the train, his first thought was that some people had put that cart back on the track. He testified he could not believe his crew had left it there. The claimant concluded by stating he still could not believe they had left the cart on the track.

After reviewing all of the testimony and evidence, the Board finds that Mr. Perrenoid returned the cart to the location where it was struck by the Southern Pacific transfer. The evidence is sufficient for the Carrier to determine that the claimant instructed Mr. Perrenoid to take the old shaft to the shop and return with the new one.

The Carrier was also justified in reaching a determination that the claimant would have been aware that Mr. Perrenoid would have to return to the same location with the cart and new shaft.


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Award No. 56

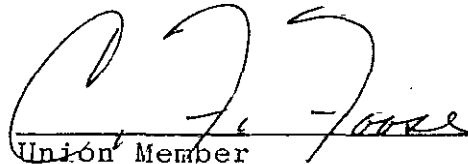
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The Carrier is further justified in determining that the claimant did not provide the necessary protection. Under the circumstances the evidence is insufficient to overrule the decision of the Carrier.

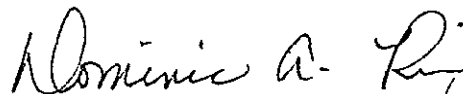
AWARD: Claim denied.



Preston J. Moore, Chairman



Union Member



Carrier Member