

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM: Claim for removal of the discipline of 30 demerits imposed upon Section Foreman M. F. Schulte for the alleged violation of Rules A, B, D, I, L and 1511 which was arbitrary, capricious, and unwarranted, on the basis of unproven charges and in violation of the Agreement. Claimant's record to be cleared of the demerits and he be compensated for any wage loss, if any, suffered.

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 March 10, 1986 in Marysville, Kansas. The claimant was charged with possible violation of General Rules A, B, D, I, and L and Work Procedures Rule 1511 of the Maintenance of Way and Signal Rules Book, revised April 28, 1985. Pursuant to the investigation the claimant was found guilty as charged and assessed 30 demerits.

The claimant herein was a Section Foreman of Gang 3204 on the date in question. James Marksman, a sectionman, testified that on this date they had proceeded to the dump with two ties in their truck. He stated he climbed up on the truck and started throwing these pieces off, and the pieces weighed from approximately 26 up to 60 pounds.

The Board has studied the testimony of all the witnesses involved including the claimant. The claimant was the Section Foreman and was seated in the cab of the truck at the time the incident took place.

This incident involved Sectionman Jim Marksman climbing up on the truck. This employee picked up one piece of tie approximately two feet long and commenced to sling it when it splintered on both ends, and a splinter on one end caught on the palm of his right glove, and he was thrown through the air and landed on his back behind the truck.

The testimony of record establishes that there was no assistance or directions the claimant could have given to Mr. Marksman or the other employees in disposing of or dumping of the ties and parts thereof. The testimony indicates that claimant instructed the employees to dump the ties and cautioned them to be careful in so doing.

There is substantial testimony regarding the fact that claimant was in the cab of the truck at the time of the incident. Evidence indicates the claimant was filling out a report.

There is a great deal of testimony in the record that there were other means of removing the ties from the truck, but there is no evidence that the employees or the claimant had been notified not to perform this work in the manner in which the task was actually accomplished.

It was also suggested that it might be a safer manner to have parked the truck in a different location. This all may well be true, but the evidence does not establish that the claimant violated the rules of the Carrier or was negligent in any manner.

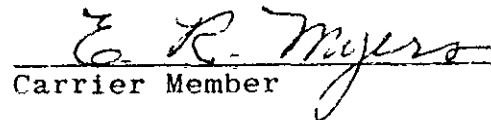
Under the circumstances herein the discipline assessed will be set aside and the claimant will be compensated for any wage loss.

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


Carrier Member

Dated: November 10, 1987