

PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
TO )  
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. Carrier's decision to remove former Texas Division Operator H. M. Person from service, effective March 27, 1989, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Person to service with his seniority rights unimpaired and compensate him for all wages lost from March 27, 1989.

FINDINGS: This Public Law Board No. 1582 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 Temple, Texas on March 10, 1989. The investigation was postponed and held on March 27, 1989. The Carrier read all of the rules which the claimant was charged with violating, and then called Roadmaster R. J. Johnston to testify.

Roadmaster Johnston testified that a Ballast Regulator was moved to Cleburne on January 26, 1989, and he was notified they had to work on the oil pan because it was leaking badly. He stated he made an inspection of the machine since he had been advised the machine was in immaculate condition and was only about one year old.

Roadmaster Johnston stated he went to Cleburne where the machine was being unloaded and made an inspection and discovered the front plow on the left side from the operator's seat had struck something and was severely damaged. He stated he made an investigation and determined the machine had been derailed in the Belton area while on the Lampasas Subdivision after hitting a switch. He further stated he determine that Claimant Machine Operator Person was operating the machine on the Lampasas Subdivision. He stated he looked at the log book, and there was no reference to a derailment on the Lampasas Subdivision.

Foreman C. I. Shepherd testified that when the Ballast Regulator 2343 came to his territory in late January, he was unable to put it into service account of extensive damage which had been done prior to the machine's arrival in his territory.

Foreman Shepherd testified that when they put oil in the machine, oil leaked out on the ground because a plug at the bottom was

broken off, and he noticed the transmission pipe was broken, and there was a rag wrapped around it to hold it on. He stated that a mechanic was called to fix the machine, and he worked on it that night, and the following date fixed that part, but when they cranked it up, the fuel filters were full of water, and they wouldn't pass the diesel through and blew the gaskets out of the fuel filter.

Foreman Shepherd further testified they finally got the machine running and tried to operate it, but the plow would not move, and the mechanic determined the frame was bent, and the front plow was bent in such a manner that it had the locks bound up, which would not let the plow traverse.

Roadmaster Mancillas testified the claimant was the only operator to operate the Ballast Operator from November of 1988 to January of 1989. He stated he inspected the log book, and there was no notation in the log book by the claimant to indicate any damage to the machine. He further testified that as far as he knew, claimant was the last machine operator to work that machine prior to its going up to Mr. Johnston's territory.

Roadmaster Mancillas also testified he made an investigation and determined the claimant had derailed the Ballast Regulator and had caused the damage which resulted. Foreman David Corona also stated he determined that the Ballast Regulator had derailed.

Truck Driver J. Faught testified he was sent to the West Siding at Belton to assist the claimant because he had derailed his machine. Mr. Faught testified that when he arrived at the scene, the blade was down, the rail was turned over on the main line, and the spikes pulled up about a rail length, and a small nicker or a small wore out place in the plow on the left side. He stated it would have taken considerable force to have turned the rail over the way it was.

The claimant testified the Ballast Regulator had derailed in the latter part of November or early December of 1988.

J. H. Graham, Assistant Supervisor of Roadway Equipment, testified he had an employee who worked the machine in December, and it was in good condition. He stated he later was notified the front plow was "tore" upon it. He testified that all the problems with the machine had to have occurred while it was in his territory.

Roadmaster Johnston was recalled, and he testified the claimant would have been able to perform all of his Ballast Regulator functions following the alleged derailment. The claimant denied he had ever derailed the machine.

The Board has studied all of the evidence and facts involved in this case. Before reaching a decision the Board recognized that

the previous case determined by this Board involved the same claimant in another dismissal case. On that basis the Board has determined that the same decision would be controlling in each case. This decision will be effective the same date as the decision in Award No. 472.

To be perfectly clear, the claimant will be reinstated with seniority and all other rights unimpaired but without pay for time lost. The claimant is to receive one last opportunity to perform his duties in a proper manner.

The claimant has approximately 38 years of service. His employment record is bad. The reinstatement by the Carrier will be dependent upon the Carrier placing the claimant in a position which the Carrier feels he is qualified to perform. Furthermore, the claimant will remain in that particular type of position if his seniority will not prevent him from doing so. The claimant will remain in that position until such a time as the Carrier is confident he can properly and safely operate the machines assigned to him.

The Carrier is directed to reinstate the claimant as stated above.

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  
Preston J. Moore, Chairman

C. J. Jones  
Union Member

*Dated at Chicago, Illinois  
January 29, 1990*

I. I. Pope  
Carrier Member