

PUBLIC LAW BOARD NO. 1844

AWARD NO. 46

CASE NO. 59

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- "(1) The disqualification of Allen R. Stoik as Class 'A' Machine Operator effective October 10, 1977 was without just and sufficient cause and on the basis of unproven charges (System File D-11-19-65).
- "(2) Machine Operator Allen R. Stoik be reinstated with all seniority as Class 'A' Machine Operator, his record be cleared and he be paid for all wage loss, all in accordance with Rule 19(d)."

OPINION OF BOARD:

Claimant was operating a Torsion Beam Tampers as part of a high speed surfacing crew on September 21, 1977. The gang was tying up for the evening in a siding at Haugen, Wisconsin. This siding was on a downgrade of some thirty inches and there were high grass and weeds growing over the rails. A Flusser ballast regulator, under the operation of Mr. Jeff Stafford, preceded Claimant into the siding. Stafford had difficulty stopping his machine due to the downgrade and the lubricating effect of the weeds being crushed under the wheels of the machinery. Track Foreman B. J. Viebrock observed that difficulty of the ballast regulator in stopping and tried to signal Claimant to apply his brakes early as he came down the siding.

In the meantime Claimant had entered the siding, come to a complete stop some 200 feet behind the ballast regulator, lined and spiked the switch,

and proceeded down the siding. He testified that the track felt especially slippery under his wheels and that he hit the brakes but the machine did not slow down. He pumped the brakes but that had no effect either and it was at that point that he saw Foreman Viebrock's signal to him to stop. Claimant tried further emergency stopping techniques, including throwing the machine into reverse, but it continued to slide until it struck the ballast regulator. Later inspection revealed that the tamper slid some 100 feet with the brakes on before striking the regulator. As a result of the collision both machines were damaged at an estimated repair cost of \$1,200.

Carrier served Claimant and Foreman Viebrock with a Notice to attend an investigation into the following charges:

"Your responsibility in connection with collision of on track work equipment at Haugen, Wisconsin on September 21, 1977 at approximately 3:45 p.m."

Following the investigation Carrier found that Claimant alone was responsible for the collision and demoted him from Machine Operator "A" to Laborer.

We find no validity in the Organization's contentions regarding insufficient specificity in the Notice of Investigation. But we do find merit in the Organization's position that Carrier has failed to fix culpability for the collision upon Claimant so as to warrant his discipline. The crux of Carrier's case is that Claimant was negligently operating his machine at a rate of speed too fast for the conditions. The evidence of record does not persuasively establish that central fact. Every witness who was present at the scene testified that the downgrade and the crushed weeds created a difficult stopping situation. Both Claimant and his supervisor testified that under normal conditions the tamper should and would have stopped far short of the collision point. Claimant did testify that he had entered that particular siding on other occasions and was

aware of the weed cover. But there is no showing what distance it took him to stop on those earlier occasions nor whether any machinery had preceded him into the siding. In any event, an accused employee does not have to prove his innocence but rather Carrier has the burden of proving his culpability.

So far as we can tell from this record, Claimant did everything a reasonable machine operator in his place could have done to stop his machine and avoid the collision. We are not persuaded that he was traveling at an imprudent speed prior to braking. Indeed we must endorse the Organization's conclusion that once he started down that downgrade the collision was virtually unavoidable given the conditions of the track and the logistics of the machinery. On that basis we must conclude that Claimant was wrongfully disciplined and we shall sustain this claim.


FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was violated.

AWARD

Claim sustained. Carrier is directed to comply with this Award within thirty days of issuance.

  
Dana E. Eischen, Chairman

  
H. G. Harper, Employee Member

  
R. W. Schmiede, Carrier Member

Dated: 5/17/79