

PUBLIC LAW BOARD NO. 2016

Award No. 1

Case No. 1

Parties The Texas Mexican Railway Company

to and

Dispute Brotherhood of Maintenance of Way Employees

Statement of Claim: Prior to his dismissal, Claimant Aquilar had been in the service of this Carrier some 35 years. On December 7, 1976, Claimant Aquilar was working as Section Foreman on Extra Gang No. 3.

Findings: The finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated August 23, 1977, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

Claimant was working as Section Foreman on Extra Gang No. 3 on December 7, 1976. He received the following letter on December 8, 1976:

"On December 7, 1976, a tamping machine under your supervision was struck by Train No. 7.

You are hereby removed from the service of the Texas Mexican Railway Company for violation of the following rules of the Rules and Regulations Governing Employees of the Maintenance of Way and Structures Department:

TM 954

TM 817-A

TM 43

s/W. J. Standridge  
Roadmaster"

A hearing was requested and granted as a result thereof. Claimant was adjudged guilty and advised that he was dismissed from service for violation of the cited rules.

The function of this Board is to act as an appellate body to determine whether due process as provided in the Agreement was accorded the Claimant, whether sufficient evidence was adduced to support Carrier's conclusions and whether the discipline imposed was unreasonable.

There were no procedural errors to bar the Board's review of the case on its merits.

The Board finds that there was sufficient competent evidence adduced including Claimant's admissions of Rule violations to support Carrier's conclusions as to Claimant's culpability. The transcript reflects that Claimant Foreman was in charge of three Maintenance of Way on-track equipment and their crews, one of which machines, the Electro Tamping Machine, was struck by Train No. 7. Train No. 7 usually passes through the area where this M of W gang was working before said gang starts to work. On December 7, 1976, because of the Hours of Service Law, said train was running late. Claimant testified that he received a train line-up, that he assumed Train No. 7 had passed through his area, and that he therefore had not provided flag protection for the machines working under his jurisdiction. Claimant admitted that he had violated Rule 954.

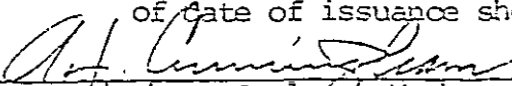
An admission of guilt leaves only the question of the discipline to be assessed for Claimant's negligence. Claimant's service record indicates that this is the third serious offense. Claimant Foreman was dismissed as such August 15, 1972, for leaving the east main line switch at Clarkwood aligned and locked for the siding instead of the Main Line. He was again dismissed, July 30, 1975, for raising the main track near Clarkwood four and one-half inches too much within one rail length. Despite reflections of Claimant's poor judgment as a Foreman, Carrier offered to reinstate Claimant on a leniency basis as a track laborer only with his seniority and other rights not otherwise impaired. Claimant declined to accept this offer.

The Board, in consideration of the fact that Claimant has 35 years of faithful service, that he is only 56 years of age which means that absent a physical disability he is ineligible for retirement at this time and that this record does not permit the Board to reinstate Claimant as a Foreman, will reinstate Claimant as a track laborer with all seniority as a laborer vacation and other rights unimpaired.

Because the decision rests solely with Carrier, the Board recommends to it that Carrier, sometime in the future, again review Claimant's record and give consideration to possibly using him as a Foreman.

Award: Claim disposed of per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

  
 A. J. Cunningham, Employee Member

  
 B. F. Wright, Jr., Carrier Member

  
 Arthur T. Van Wart, Chairman and Neutral Member