

Award No. 3
Case No. 8

PUBLIC LAW BOARD NO. 2778

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

-and-

BALTIMORE AND OHIO RAILROAD COMPANY

Statement of Claim:

Track Foreman D. J. Cross and Class "A" Operator H. A. Carr be allowed the remedy of Rule 48(e) because of Carrier's violation of Rule 48 when assessing discipline against them.

Findings:

On August 18, 1978, Extra 4049 West struck on-track equipment used by the two claimants. That equipment was not located at the time within the authorized work limits that were carefully spelled out in the order obtained by Track Foreman Cross.

The fact that the train may have been proceeding at

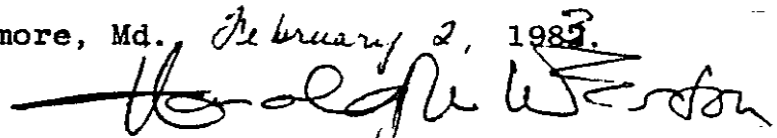
an excessive rate of speed does not relieve the foreman from his responsibility to comply with his work order and stay within authorized limits. His failure in that regard is based on uncontroverted evidence and we find no ground for setting aside the discipline imposed on him.

He was not charged with any offense until after he had appeared as a witness in a hearing concerning the role played by the train crew in the accident. However, this fact does not constitute reversible error under the present circumstances, particularly since findings are based on undisputed testimony and no reversible error exists.

No valid basis is perceived for Operator Carr's discipline. He followed the unambiguous instructions of his foreman.

Award: Claim sustained as to H. A. Carr; denied as to D. J. Cross to be effective within thirty (30) days.

Adopted at Baltimore, Md. February 2, 1983.



Harold M. Weston, Chairman



Carrier Member



Employee Member