

PUBLIC LAW BOARD NO. 3558

AWARD NO. 12

Case No. 12

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Houston Division Machine Operator L. D. Busby for 48 hours at straight time rate of pay and the same amount of overtime hours performed by relief driver Jessie Castro beginning February 1, 1984, and continuing through February 9, 1984, account Mr. Busby not allowed to work."

(MW-84-26)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee respectively within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant, a 10-year employee of Carrier, sustained an on-duty injury on June 28, 1983. The Carrier conducted an informal investigation of the injury. Thereafter, when Claimant was released by his personal physician as fit for return to service he was directed to report to a company physician for further examination. The Carrier's Chief Medical Officer (Dr. H. E. Hyder) subsequently released Claimant to return to work effective February 1, 1984.

When Claimant then attempted to return to work he was informed by Carrier that he would not be allowed to do so until he had agreed that he was at fault in his personal accident of June 28, 1983. In this respect, Carrier stated in a letter to the Organization, dated March 2, 1984, the following:

"Investigation reveals that on January 5, 1984, Messrs. M. J. Cook, R. H. Shirley and A. P. Campbell discussed with Mr. Busby his injury of June 28, 1983. On January 9, 1984, Mr. Campbell wrote a letter to Mr. Busby regarding the discussion of January 5th. In this letter Mr. Busby was asked, if he agreed that this letter properly described the interview, to please sign the letter and return it. However, he was also advised that if he did not agree with any part of the letter, he was to state that difference with his signature.

Mr. Busby did not return this letter but on February 1, 1984, Mr. Busby and you [Vice Chairman Lewis of the Organization] visited with Mr. Campbell to discuss Mr. Busby's return to duty at which time Mr. Campbell advised that Mr. Busby refused to comply with request in letter of January 9th and that he would not allow him to return to work until he was certain that Mr. Busby understood the cause of the accident.

By letter dated February 6, 1984, Mr. Busby responded to Mr. Campbell's letter of January 9th. When this letter was received, Mr. Busby was instructed to attend orientation program on February 9th and 10th, for which he was allowed pay and expenses. Mr. Busby was then allowed to return for duty."

The Claimant's letter of February 6, 1984, referred to above, read:

"This is in response to your [Mr. Campbell's] letter of January 9, 1984 (copy attached). The only reason I am even responding at this time is because you refuse to put me back to work unless I do so. I feel this procedure is a deviation from Company Policy based on the Company's past actions.

I cannot state what your investigation revealed as I am not aware of your sources. While it is true I loaded the tractor several times and the tractor was in forward gear, it is not true that the air compressor, tractor brakes and selector switch were in good condition.

The remainder of the letter does not warrant a response at this time. Suffice it to say the accident was not caused by any negligence on my part. Neither were the other accidents you mentioned in the letter caused by negligent acts on my part."

Although the Carrier urges that Claimant alone was responsible for his being withheld from service, maintaining that there was sufficient time between the January 9, 1984 meeting and February 1, 1984, when Claimant reported for a return to duty physical, for Claimant to have reconciled any differences in the contents of the supervisory official's letter. In this latter respect, the Carrier endeavors to submit the letter was not intended to have Claimant admit he had been at fault in the accident, but only to be certain that Claimant understood the cause of the accident.

As indicated above, in the Board's reference to the March 2, 1984 Carrier letter, we are not persuaded that the intent of the Carrier

letter of January 9, 1984 can be held to have been solely related to its desire to have Claimant understand the cause of the accident and injury in question. In our view, the Carrier letter, if signed or acknowledged as written, would have been tantamount to Claimant admitting total fault for the accident as well as an admission that, as Carrier had set forth in such letter, "by proper procedures and attention to the job at hand," Claimant could have avoided past, but unspecified, accidents.

The Claimant had filed an accident or injury report following the June 28, 1983 incident. Certainly, if the Carrier was not then satisfied with the information given by Claimant it could have made timely inquiry of him and could have conducted a formal investigative hearing if it believed he had given false information or had been in violation of recognized safety rules. We do not believe the Carrier, after having apparently waived such rights, could, some seven months latter, endeavor to challenge the accident report by insisting that as a condition of return to service from injury reportedly sustained in such accident, that Claimant affix his signature to a Carrier prepared report.

In the circumstances of the record, we will allow the claim as presented, there having been nothing of record to show that Claimant would not have stood for work as claimed.

AWARD:

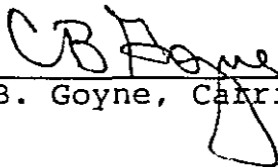
Claim sustained.

ORDER:

The Carrier is directed to make this Award effective within 30 calendar days of the date set forth below.



Robert E. Peterson, Chairman
and Neutral Member



C. B. Goyne, Carrier Member



M. A. Christie, Employee Member

San Antonio, TX
June 4, 1985