

PUBLIC LAW BOARD NO. 3558

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of San Antonio Division Machine Operator R. D. Sanchez for 120 hours at his straight time rate of pay and his personal record cleared of all charges account being unjustly suspended from service." (MW-85-1)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee 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.

By letter dated October 8, 1984, Claimant Sanchez was advised by the Carrier as follows:

"You were machine operator assigned to Plasser Tamper 226 RH on Wednesday, September 26, 1984, when at approximately 10:30 A.M., in the vicinity of Kirby Yard you were operating your machine with all buggies set up for tamping. You were observing these buggies trailing through the 3rd switch from the caboose track when you failed to observe that Ballast Regulator 160 RD had stopped in front of you. This resulted in a collision doing approximately \$1,200.00 damage to Tamper 226 RH.

This is in violation of Rule M-869, which I quote to you below:

'Track machines must be operated at a safe speed at all times, subject to conditions, especially on grades, both while working and while running light.

While traveling, machines must be separated from other machines in such a way as to avoid any undesired contact between any two machines.'

For the above violation, you are hereby suspended for a period of fifteen (15) working days from October 8 through October 26, 1984. Time off shall not be considered as vacation or otherwise compensated for."

Upon receipt of the above letter, the Claimant requested and was granted an unjust treatment hearing in pursuance of Article 48 of the current Rules Agreement.

The investigation was held on October 29, 1984, and by letter of November 5, 1984, Carrier advised Claimant as follows:

"Upon review of the transcript of the hearing afforded you on October 29, 1984, concerning your suspension for violation of Rule M-869 on September 26, 1984, I feel the charges were proven and discipline shall be sustained."

It is the position of the Carrier that close examination of the evidence developed at the investigation indicates that Claimant was traveling with Tamper 226 RH in a work move, with the buggies down in a work position, and that as such, his attention was focused on those buggies as they were trailing through the switches, and he failed to properly observe his movement in order to prevent the tamper from getting too close to the regulator. Further, that as a result of Claimant failing to maintain a safe distance between machines, he could not stop in time to prevent the buggies from colliding with the regulators plow.

The Carrier also states that contrary to the Organization's contentions, the accident was not caused by defective brakes on the tamper. In this regard, the Carrier submits that it was the testimony of a witness at the investigation that the brakes were repaired prior to the accident and that it was not reported to him that the tamper was having brake trouble after the accident.

In setting forth its position that the accident was the result of a malfunction in the brake system, the Organization submits that testimony introduced at the investigation shows that Claimant had previously reported brake problems on this particular tamper on at least three separate occasions prior to the accident, and that the brake system had been worked on the day before the accident. It asserts the accident occurred because the Carrier had failed to keep its equipment in a safe operating condition.

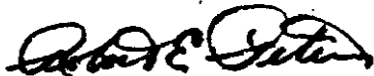
This Board is not persuaded that the cause of the accident was

the result of a brake malfunction. Certainly, even if it was to be assumed arguendo that the brakes on the tamper were known to be faulty, this should have alerted Claimant to be more careful in following the ballast regulator, and not to have had his attention focused on the buggies as they were trailing through the switches. Furthermore, as indicated in the transcript of hearing, notwithstanding any brake malfunction, the Claimant admitted that he was not aware that the ballast regulator had stopped on the track in front of him until after he had completed watching the rear buggy of the tamper clear the frog on the third switch, which was at about the same time the front buggy was about to hit the ballast regulator.

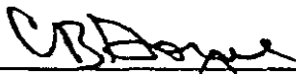
The record failing to show any basis for this Board to hold that the suspension be modified or set aside, the claim will be denied.

AWARD:

Claim denied.



Robert E. Peterson, Chairman
and Neutral Member



C. B. Goyne
Carrier Member



M. A. Christie
Organization Member

Houston, TX
February 4, 1986