

PUBLIC LAW BOARD NO. 3662

Case No. 1

Award No. 1

Parties to Dispute)	FLORIDA FEDERATION OF RAILROAD EMPLOYEES
)	
)	(Organization)
)	
)	- and -
)	
)	FLORIDA EAST COAST RAILWAY
)	
)	(Carrier)

Statement of Claim:

Claim of Bruce D. Bailey, Locomotive Engineer dismissed from the service of the Carrier on September 7, 1983; that he be reinstated with all prior rights, benefits, prerogatives and seniority he was entitled to before the alleged incident occurred and that he be paid for all lost time due to this accident.

BACKGROUND AND DISCUSSION

The parties were given due notice of the hearing.

The Carrier and Employee involved are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

On August 9, 1983 B. D. Bailey (Bailey) was working as locomotive engineer on ~~rear~~^{YARD} engine assignment at the Hialeah terminal. The conductor was M. C. Wilson (Wilson).

At about 1:00 P.M., Bailey, operating Locomotive #504, which was shoving 62 cars (34 empties and 28 loads) while attempting to couple up to a standing cut of cars in Rinker Southeastern Materials House Track #1, there was a sideswipe collision between FEC 12340, empty gondola and FEC 13665, empty hopper which was fouling the crossover switch in Rail #2 at the north end of the (Rinker) Yard. The sideswipe resulted in damage to both cars.^{1/}

^{1/} The record (Tr. P. 8) indicates the damage to the 2 cars and the cost of rerailment process to be \$2,342. Of this amount \$1,246 was damage to the hopper (FEC 13665) and \$295 was damage to the gondola (FEC 12340) and \$800 for rerailment of the hopper (FEC 13665) which was the only car derailed.

On August 29, 1983 Bailey and Wilson attended a formal investigation to develop facts and responsibility in connection with the charge that they had failed to control movement while attempting to couple up to a standing cut of cars at the (Rinker) Yard.

The following rules and instructions were involved in the incident:

Operating Rules

General Notice:	Paragraphs 1, 2, 3 and 4
General Rules:	A, B and D
Rules:	7(b), 103(a) (Paragraphs 2, 3 and 7), 106, 108, 411, 703, 850, 851, 852, 853, 1001, 1003, 1004 and 1018
Rules of Conduct for Employees:	Rule 27

As a result of the investigation Bailey was dismissed from the service on September 7, 1983.^{1/}

The Carrier argues that the record speaks for itself. It says that Bailey was given a fair and impartial hearing, the discipline administered was not the result of arbitrary

^{1/} Wilson was reinstated without penalty.

nor capricious judgment nor was it in bad faith. All of this, in the Carrier's judgment fully supports that Bailey was properly dismissed and the Carrier's position should be sustained.

The Organization in its submission and argument says that:

1. Wilson, not Bailey, was responsible since he did not give proper car length signals going to a joint and he was not on the point as he should have been, but rather was riding in a truck of Rinker Southeastern Materials to keep out of the rain.

2. Wilson was at fault for not having gone back and checked the switch at the north end of Rinker Tracks 1 and 2. Had he done so, according to the Organization, he would have found the improper position of the cars in the crossover.

3. The crew was working shorthanded on the day of the accident (no trainman) and that contributed to the accident.

4. Bailey was a victim of harrassment and intimidation and were it not for that he would not have been dismissed.

FINDINGS

The Board has thoroughly studied the positions of the parties against the record and finds as follows:

Nothing in the record sustains the Organization's position that the crew was working shorthanded and that contributed to the accident.^{1/}

The record does not justify the Organization's position that Bailey was a victim of harrassment and intimidation.

Examination of the Organization's position placing the responsibility and fault on Wilson did not fully convince the Board as to its position -- but there are sufficient conflicting views and testimony so as to tip the balance in favor of the Organization's position.

^{1/} Here the Board notes the testimony of Conductor Wilson (Tr. P. 30) and observes that his conduct was also under investigation by the Carrier at the time (Tr. P. 18) notes that a full crew is 2 people but normally there are 3 people.

For example:

1. The testimony of Wilson and Bailey are at variance with respect to the approximate speed of the train immediately prior to the sideswipe (Tr. P. 22 and 36).

2. The record is not clear as to whether or not Bailey intended to couple the cars (Tr. P. 26).

3. The misalignment of the crossover switches (Tr. P. 14 and 19).

4. The reasons Wilson rode down to the joint in a truck (Tr. P. 22) rather than remaining on the end of the 62 cars being shoved are not clear from the record.^{1/}

5. The effect of the weather might also have been a factor. Bailey testified concerning his limited vision, and Wilson testified that he proceeded to give the countdown from the truck. Is it possible that the weather limited Wilson's vision in spite of his testimony to the contrary? (Tr. P. 26).

One point, however, is crystal clear to this Board. Wilson did not give any emergency type signal to Bailey (such

^{1/} The Board also took note of the Carrier's Operating Rules No. 959 and 971 respecting Wilson's performance of his duties in this manner.

as Stop - Stop, Emergency, Watch Out, Big Hole it), but rather the lesser signal of "That will do, that will do."

CONCLUSIONS

After thorough consideration of the whole record, all of the evidence, the self-interests which are involved, and for the reasons stated herein, the Board concludes as follows:

(1) The record supports that both Bailey and Wilson were negligent in the performance of their duties.

(2) There is a long standing labor relations principle that there must be no disparate discipline applied where more than one employee is responsible. To discipline Bailey and not Wilson violates this long established principle.

(3) Bailey was offered reinstatement as a matter of leniency on March 31, 198⁴₃, and on June 1, 1984 was advised by the Carrier that if he disputed the conditions of the offer he might pursue the assessment of ^{RITs 2} ~~dement~~ and pay for time lost in the usual manner. Therefore, to

hold the Carrier liable for any pay for time lost after June 1, 1984 would be improper.

(4) The Board finds no basis for interest payments.

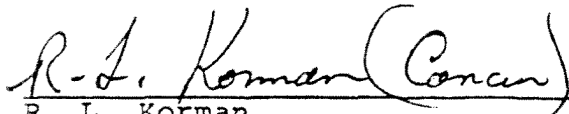
(5) Under the circumstances, the claim must be sustained.

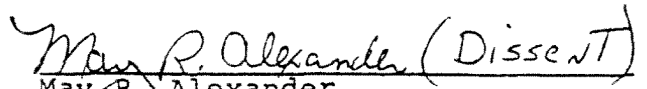
AWARD

Claimant shall be made whole with respect to all contractual items other than pay. Claimant shall be made whole with respect to pay from September 7, 1983 to June 1, 1984.



Charles H. Frost, Chairman and
Neutral Member


R. L. Korman
Organization Member


May R. Alexander
Carrier Member

9-25-84

Dated this 14 day of September, 1984.