

PUBLIC LAW BOARD NO. 3765

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* Consolidated Rail System Federation *
* Brotherhood of Maintenance of Way  *
* Employees                          *
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* Grand Trunk Western Railroad Company *
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Parties to the Dispute

Case No. 40

STATEMENT OF CLAIM

D.A. Rushing dismissal - request that he be returned to service, permitted to displace under Rule 3 of the current agreement, with all charges and decision removed from his personal record and paid for all time lost.

OPINION OF THE BOARD

At the time of the incident that gave rise to this case, Claimant D.A. Rushing was employed by Carrier as an Assistant Supervisor of Track. As such, Claimant was a Management employee, but he held seniority in the craft. On June 1, 1989, Claimant was notified that he was being terminated from his Track Supervisor's position. On June 5, he was notified that he was being held out of service and he was also notified to appear at an investigation into the following charges:

To determine your particular responsibility, if any, for insubordination in that you violated previous instructions given to you by then Assistant Chief Engineer J. Q. Anders, regarding unauthorized use of company vehicles by allowing your wife to operate the company vehicle assigned to you which resulted in an accident causing extensive damage to the vehicle and injury to your wife and/or child. Said accident occurred at 11:05 A.M., May 27, 1989 on I-94 at the Moross east-bound entrance ramp (I-94 Mileage 224 Eastbound).

A hearing into the matter was held on June 14, 1989. A record of that hearing has been made a part of the record presented to this Board. A review of that record reveals that Claimant received a full and fair hearing and was granted all procedural and substantive rights guaranteed by Agreement. The record also reveals that Claimant was guilty of the charges against him.

While this Board is mindful of the serious liability Carrier faced when Claimant allowed unauthorized people to drive Carrier's vehicle, under the circumstances present in this case, we are not persuaded that Claimant should be permanently dismissed from Carrier's service. Claimant is a long-term and faithful employee who has worked his way up through the ranks. He apparently possesses considerable railroad knowledge, as well as expertise as a Machine Operator. It is this Board's conclusion that time held out of service should allow Carrier to make its point with Claimant, as well as those other employees who might allow unauthorized persons to use vehicles intrusted to them.

Claimant should be put on notice that he is being returned to work on a last-chance basis. He should take special notice that he is required to follow all orders given by his Supervisors and that he is required to follow all rules and regulations to the letter.

AWARD

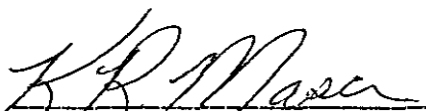
Claimant shall be returned to work in the craft and be allowed to displace into any position his seniority skill and ability will allow. No pay for lost time or benefits is authorized.



R.E. Dennis, Neutral Member



Jo A. DeRoche, Carrier Member



K.R. Mason, Employee Member

February 20, 1991