

Award No. 96
Case No. 98

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
TO THE) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue a thirty (30) day suspension for alleged violation of Rules A, and B, of the safety and General Rules for all Employees, form 2629 Standard and Rule 965 of Rules and Instruction for Maintenance of Way and Structures is harsh and extreme. The thirty (30) day deferred suspension could be activated anytime during a six (6) month period following the imposed corrective action if another incident happened involving the Claimant.

2. That the Carrier now expunge all suspensions and or deferred suspension, and compensate the Claimant for all wage loss and or made whole as a result of the Investigation and the imposed discipline in their Letter of May 18, 1992.

3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their Notice of Investigation.

FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

In this dispute Central Region Machine Operator B. W. Scruggs (the "Claimant") was notified to attend a formal investigation on April 28, 1992 concerning a report alleging that while the Claimant operated Ballast Regulator AT-4399 at Canyon, Texas on April 6, 1992, the Ballast Regulator struck a vehicle at the 15th Street grade

crossing, in possible violation of General Rules A, B, and I of the Carrier's Safety and General Rule for All Employees, and Rule 965 of the Carrier's Rules and Instructions for Maintenance of Way and Structures. Pursuant to the investigation the Carrier determined that the Claimant violated Rules A and B and Rule 965, and he was issued a thirty (30) day deferred suspension.

The Claimant testified at the formal investigation that while operating a Ballast Regulator eastbound, a collision occurred with a pickup truck at a grade crossing at 15th Street in Canyon, Texas. He stated that the crossing gates were down and all traffic was stopped at the crossing. However, while proceeding through the intersection, a pickup truck entered the intersection after running around the end of the crossing gate and collided with the regulator. He further testified that the Ballast Regulator was in the middle of the intersection when the accident occurred, and he was traveling at approximately 5 m.p.h. The point of contact between the truck and the Ballast Regulator established that the truck entered the intersection from the wrong lane of traffic.

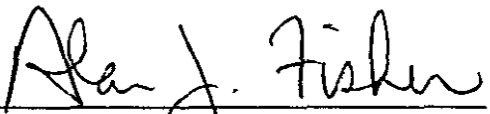
The record showed that the pickup truck was traveling in the same direction as the Claimant on a road parallel to the tracks, approached the intersection from behind the Claimant, and then ran around the crossing gates. Further, the driver of the truck was ticketed for his failure to stop for an approaching train.

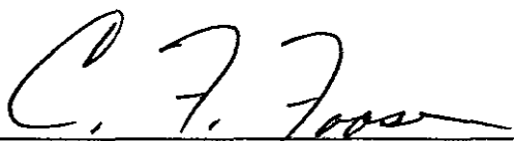
Roadmaster J. C. Shurson testified that Carrier rules prohibited the Claimant from relying on highway crossing signals. Moreover, the Claimant should not have entered the intersection until he had ascertained that all traffic had stopped, and the Claimant should have been prepared to stop to avoid the accident. The rules required that the Claimant approach the crossing slowly, stop the machine before the crossing and visually look and make sure that he knew the intentions of the traffic prior to entering the intersection. He declared that vehicular traffic has the right of way in a road crossing at all times. Specifically, the Claimant was not to enter the intersection unless the crossing was clear, and the fact of the accident demonstrated that it was not. Moreover, these rules and restrictions imposed a responsibility upon the Claimant to determine the location of the pickup truck prior to going through the intersection.

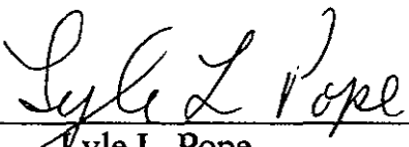
Special Agent R. A. Merrick testified that he investigated the matter and spoke with several witnesses to the accident. He testified that various witnesses stated that although the lights were activated on the gate arms, the arms were not down and in place when the accident happened.

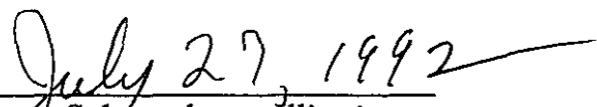
After a review of the evidence and testimony of record the Board finds that a deferred suspension is appropriate but it should be reduced to three (3) days. The Board finds that the Claimant offered credible testimony, and the only conclusive evidence in the record that the Claimant violated the cited rules is the fact that an accident took place. The Carrier has every right to expect its employees to comply with its rules, but the Board believes that the Claimant should not be held accountable for the negligence of the pickup truck driver. There is no dispute that the crossing gates were activated; all vehicular traffic from both directions was stopped at the intersection; and, the driver of the the pickup truck was in the opposite lane of traffic when he went around the crossing gate and struck the Ballast Regulator. Thus, it is the Board's opinion that it would be excessive discipline to have the Claimant subject to a thirty day suspension under the circumstances of this case.

AWARD: Claim sustained as set forth above.


Alan J. Fisher
Chairman and Neutral Member


C. F. Foose
Organization Member


Lyle L. Pope
Carrier Member

Dated: 
Schaumburg, Illinois