

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: That the discipline of thirty days suspension imposed on System Gang employee D. C. Rudat for alleged violation of Rules 1, K, 4252 and 4159 was arbitrary, capricious and unwarranted on the basis of unproven charges and in violation of the Agreement. That the claimant's record shall be cleared of the discipline and he shall be compensated for wages lost which includes payment for wages lost in connection with having to serve another thirty day suspension on his record that was previously deferred (total sixty days).

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in Cheyenne, Wyoming on August 31, 1987 to develop the facts and determine responsibility for his alleged unsafe operation of MW06502 hy-rail truck on August 14, 1987 which resulted in extensive damage to SAG-13 (spike auto gauger) in the vicinity of MP 16 on the Greeley Subdivision. Pursuant to the investigation the claimant was found guilty and was assessed thirty days suspension.

R. B. Wehrli represented the claimant in the investigation. At the commencement of the investigation Mr. Wehrli objected to D. G. Paul, General Roadmaster, acting as hearing officer and being the charging officer. Mr. Paul stated that the letter was drawn up through his office at the request of Jube McIntyre who was supervisor of the gang.

The Union also contends that the claimant had been prejudged since he had been dismissed from service. The Union also noted that the letter of charges indicated the investigation would be held in conformity with the Agreement effective January 1, 1973 as revised October 1, 1978. The Union points up that Rule 48 was revised effective April 1, 1981. However, the Carrier advised that the investigation would proceed under Rule 48 as it existed that day.

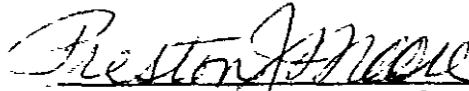
The Union also makes the contention that the charges were not pre-cist and the claim should be sustained on that basis. The Board finds that under the circumstances herein the claimant could be suspended pending an investigation. The Board has also reviewed the charges made by the Carrier and finds they are sufficient for the claimant to be well aware of the specific charges. A reading of the charges makes it clear that the claimant should be aware that the investigation was to determine his responsibility, if any, in connection with the collision of the hy-rail truck and spiker.

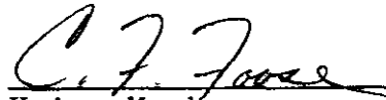
The claimant was operating the hy-rail truck at the time of the accident. Testimony indicates there was approximately \$7,000 in damage to the auto gauger and minor damage to the hy-rail truck. There were no personal injuries involved. The evidence indicates there was no malfunction with the truck.

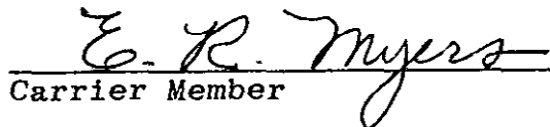
The truck was examined by an equipment supervisor who stated in a written statement that all the brakes, mirrors and lights were functioning properly. The Union objected to the written statement. A written statement may be accepted as evidence but not relied on too heavily if there is contradictory testimony. In other words the weight of the evidence should be considered when accepting such a letter since the other parties do not have the right to cross-examine the author of the letter.

The Board has reviewed the testimony of R. J. McIntyre, Assistant Rail Gang Supervisor, S. B. Ehlers, Heat Control Engineer on Gang 9000, Wilbur Atencio, Track Laborer, Andrew Charley, Track Laborer, and the claimant D. C. Rudat. After a careful review of all the testimony the evidence is more than adequate for the Carrier to find that the claimant was guilty of negligence and was the cause of the accident herein.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Carrier Member

Dated: November 10, 1987