

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM: Claim in behalf of Assistant Foreman M. Van Cleef for removal of 45 day suspension from his record with pay for all time lost.

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 Los Angeles, California on August 10, 1987 to develop the facts and determine his responsibility, if any, concerning charges that while he was performing duty as Assistant Foreman on Extra Gang 7866 engaged in jacking a car door closed, you were careless of the safety of yourself and members of your gang under your supervision indicating violation of Safety Rules A, B, I, 600, 607(1), 607(2), 4000, 4001, 4002, 4007, 4008, 4432 and 4433 as found in the "Safety, Radio and General Rules For all Employees" Form 7908, revised 4/85 and Rules 1510 and 1511 as contained in the Maintenance of Way Rule Book effective April 5, 1987.

The investigation was held on that date, and pursuant thereto, the claimant was found guilty of being careless of the safety of himself and other members of his gang under his supervision and of violating General Rules A, B, I, 607(1) and Safety Rules 4000, 4001, 4002, 4008, and 4432 as contained in "Safety, Radio and General Rules for All Employees, Form 2908, Revised 4/85. The claimant was assessed 45 days suspension.

The transcript contains 72 pages of testimony. At the outset the claimant's representative contended that the charges were not precise and requested that the investigation be cancelled. The Board has examined the charges and finds that they are precise, and the claimant knew or should have known exactly the nature of the charge.

The claimant herein was the Assistant Foreman on the gang in question. The claimant testified that Track Supervisor Bill Oakden sent him out to close ballast car doors. He testified that this one car in particular, which was a coal hopper type door, needed to be closed.

The claimant stated that he sized up the job to where he could possibly brace and close the door. He stated they put the jack

in there and started jacking it up, and the car door was closing and they had it within about five to six inches wide when the jack broke. The claimant stated that Mr. Carillo did not fall. He stated that he had instructed Mr. Carillo to come away from between the car and the bar because, if at any time the bar did break loose, he would have been seriously injured.

The claimant admitted that he had four men on the bar. He also stated that he had placed the jack in place and had looked at it to determine if it was safe. He further testified that he knew he was the man in charge. He stated that he believed there was sufficient blocking under the base of the jack.

The claimant admitted he had been briefed about a month previously by Mr. Oakden to open the hopper doors with a come-along but was never instructed with a come-along.

The claimant stated that Rule 4432 referred to "metal against metal" but testified he did use the bolt against the jack but also braced it against the tie which is partial and partial.

The claimant testified that when the jack broke, he reported Mr. Carillo's possible injury to Mr. Oakden. The claimant testified that none of the employees working under his supervision stated that the manner in which they were performing the work was unsafe.

There is some conflict of testimony in this case. Because of other evidence which is fully established, it will be unnecessary to determine the credibility of the witnesses involved.

Track Supervisor W. S. Oakden testified that Rule 4432(a) requires that sufficient footing be used and that blocking used under the jack is of sufficient size and to make certain that the jack is properly placed and level; also not to jack metal against metal, except when using track jack to raise a crossover or line track.

Supervisor Oakden further testified that there was insufficient footing, and no blocking was used under the jack; further that the jack was not level and was improperly placed; further they were jacking metal against metal.

Extra Gang Laborer Richard Fimbres testified that they did not have full bearing on the bottom of the jack, but it was on a tip. In other words, it was on an angle. He testified this was the manner in which the claimant instructed him to do it.

Under those circumstances the evidence is sufficient for the Carrier to find that the claimant was guilty. The Board is personally of the opinion that normally discipline in excess of 30 days is not of value to the employee nor to the Employer. However, that is not the prerogative of the Board. The sole

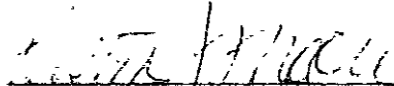
4338

Award No. 13

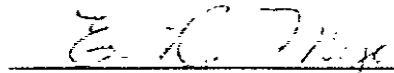
Page 2 3

prerogative of the Board is to determine if the discipline which was assessed is harsh, arbitrary or unjust. Under the circumstances herein the Board does not find such to be the case. Therefore, the claim will be denied in its entirety.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Carrier Member