

PUBLIC LAW BOARD NO. 4338

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

SEP 15 1988
VICE PRESIDENT
LABOR RELATIONS

STATEMENT OF CLAIM:

1. The Discipline (30 day suspension) assessed Oregon Division Track Subdepartment employee Mr. R. C. Branstetter for alleged violation of various company rules as indicated in Mr. G. D. Altenburg's letter of June 7, 1988, was arbitrary, capricious and unwarranted.

2. The claimant's record shall be cleared of the discipline referred to in Part (1) hereof and he shall be compensated 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 LaGrande, Oregon on May 20, 1988 to develop the facts and determine his responsibility for an incident which occurred May 10, 1988 at approximately 9:30 a.m. LaGrande Yards near Mile Post 289.50 while installing No. 1AJ gauge plate he was careless of the safety of others when K. W. Mellinger sustained a personal injury resulting in fracture to left hand indicating possible violation of General Rules A, I, 607(1), 400(1) and 4008 of Form 7908, Safety Radio and General Rules for All Employees, effective April 1985, as revised April 27, 1986, and Rule 1510 and 1511 of Union Pacific Railroad Company "Maintenance of Way Rules" effective April 5, 1987.

Pursuant to the investigation the claimant was found guilty of being careless of the safety of others. The Board has reviewed the entire transcript of record and the evidence submitted.

The charge dated May 12, 1988 has been carefully studied and reviewed. Although the charge states that the claimant is to report for hearing and investigation to develop the facts and determine his responsibility for incident which occurred on May 10, 1988, it then proceeds to state: "at approximately 9:30 a.m. at LaGrande Yards near Mile Post 289.50 when, while installing No. 1AJ plate, you were careless of the safety of

others when Mr. K. W. Mellinger sustained a personal injury." The charge continued indicating possible violation of General Rules, including 607(1). This charge constitutes a presumption of guilt.

The claimant should have been charged with carelessness which constitutes a violation of certain rules, including Rule 607(1). This charge simply states that the claimant was careless. The claimant should be charged with the act or acts which constitute a violation of the rule. The charge would have been perfectly acceptable if the claimant had been charged with carelessness which constitutes a violation of Rule 607(1).

In this regard it is noted that the transcript of the investigation commences with an attempt to resolve the problem created by the charge letter of May 12, 1988. The wording has been changed to that which is acceptable and does not constitute a pre-judgment of guilt.

The wording states in part: "to develop the facts and determine responsibility, if any, concerning allegations that Mr. K. W. Mellinger, while working as an extra gang laborer, was careless of his safety; and Mr. J. R. Gray, Jr., Section Foreman, and Mr. R. C. Branstetter, Assistant Section Foreman, were careless of the safety of others, resulting in personal injury."

The wording of this charge is perfectly proper and acceptable. This wording does not constitute pre-judgment. Following the determination that pre-judgment existed the Board turned to the possibility that the modification by the Hearing Officer of the charge would in any way affect pre-judgment.

After due consideration it is the opinion of the Board that once Carrier had made a pre-judgment of the claimant's guilt, it was impossible for the claimant to have a fair and impartial hearing. The discipline letter of June 7, 1988 found that the claimant was careless of the safety of others.

Under the circumstances the Board has no alternative but to find that the discipline should be set aside, and the claimant paid for all time lost. All mention of this incident will be removed from the claimant's record.

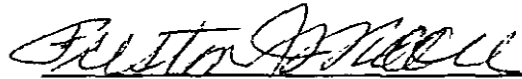
AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

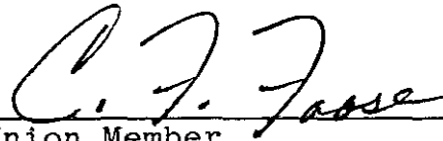
4338

Award No. 25

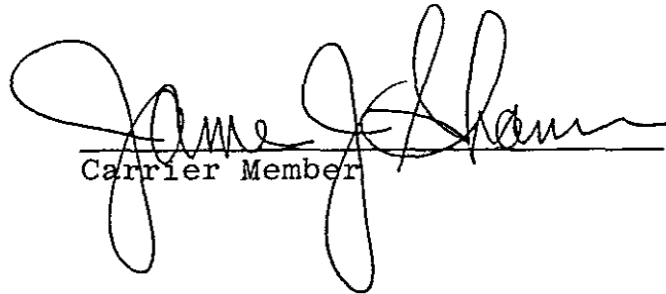
Page 3



Preston J. Moore, Chairman



Union Member



Carrier Member