

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM:

1. The discipline (15 day suspension) assessed Bridge Welder J. J. Williams for alleged violation of various company rules as indicated in Mr. D. D. Tholen's letter of March 20, 1989, file 89103034 was arbitrary, capricious and totally 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 at Sidney, Nebraska on March 2, 1989 to develop the facts and determine his responsibility, if any, in connection with alleged report that while he was riding in his assigned gang vehicle, his deliberate actions damaged the cab of the truck when he pushed his back into it with his feet.

At the commencement of the hearing the claimant's representative requested the charges against the claimant be dropped since the Assistant Foreman, Tom Long, was not present to testify.

Denny Peters, Manager of Bridge and Building Maintenance, testified that Willie Deurelein informed him of the incident where claimant did some damage to the back of the truck by putting his feet up on the front of the cab and pushing his back through the rear. This witness also testified that he asked Tom Long if he had any knowledge or knew anything about the incident, and he was advised that he did not. Mr. Peters said he had no knowledge of the incident until December 14, 1988.

The testimony of all the witnesses has been reviewed. This includes the testimony of Willie Deurelein, Mr. Land, Mr. Peters and the claimant.

The evidence is insufficient for the Carrier to find that claimant deliberately damaged the cab of the truck. The evidence indicates the back pad was not in the truck, and it is unlikely the pressure

the claimant put on the back of the cab would have caused damage if the back pad had been in place.

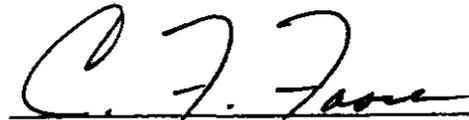
The Carrier is directed to remove the fifteen day suspension and to pay the claimant for all time lost.

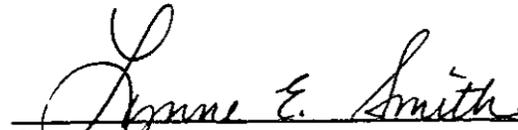
AWARD: Claim sustained as per above.

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

Dated: July 14, 1989.


Preston J. Moore, Chairman


Union Member


Carrier Member