

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM:

(1) The discipline (60 day suspension) assessed B&B Foreman W. L. Kernan for alleged violation of various company rules as indicated in J. L. Riney's letter of May 15, 1989 was arbitrary, capricious and unwarranted. Notwithstanding this fact, provided the sustaining of the charges was appropriate, which it was not, the discipline assessed is excessive.

(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 on April 27, 1989 in Portland, Oregon to determine his responsibility, if any, in his alleged failure to safely operate a motor car and push car (crab) resulting in injury to one of his employees, including a possible violation of Rules A and 1435 of the Maintenance of Way Rule Book effective April 4, 1988.

Rodney B. Jones, Manager of Bridge and Building Maintenance, testified that he investigated the accident on April 19, 1989 and this investigation revealed that claimant B&B Gang Foreman Kernan was operating the motor car at the time of the accident. He testified that David Weigel, B&B Carpenter, had been sitting on the push car which was entrained between the crab car and the motor car.

Mr. Jones testified that as they were backing off the bridge, a rail lock on the crab car had either been left on the rail or was not secured for movement and had fallen and locked on the rail which caused the rail lock to be caught on a joint bar causing the crab car to derail. He stated that the rear of the crab car had lifted up and the push car went under the crab car.

Mr. Jones then testified that when the movement stopped, the crab car had Carpenter Weigel's legs pinned under the push car or the crab car, and the gang had to lift the crab car off Mr. Weigel's legs. He further stated he found nothing wrong with the rail lock and it appeared to be in normal working order.

Mr. Jones further testified there was a small chain which was located near the center of the rail lock which was attached to a bolt that is welded on the end of the crab car and this holds the chain which holds the rail lock from coming down in contact with the rail. He testified that if the chain is not secure, and the lock is allowed to drop, it grabs the rail.

Mr. Jones also testified that when the accident happened, the rail lock was down, but there was no indication the chain had broken or any indication of any defect in the equipment or the rail lock, or the chain which held it up.

He testified that David Weigel sustained a compound fracture of the small bone in the area of the shin and suffered dislocation of three toes which had to be surgically pinned back into place.

Mr. Jones also testified that the crab car and the push car were being pushed by the motor car, and the motor car being used was an A-5 which can carry up to six men.

Mr. Jones stated that he had discussed the matter of riding on equipment and advised the employees that such was not authorized and could result in serious injury. He stated he had told the employees of two accidents which had occurred the year before. He testified that Company rules prohibited employees from riding on push carts and referred to Rule 1435 in the Maintenance of Way Rule Book.

The claimant testified the push car was coupled to the motor car with about a five foot drawbar, and the crab was coupled to the end of the push car with what he thought was a 30 inch drawbar. He testified that David Weigel was sitting behind the lead car, which was the crab, and was seated on the left leading end of the push car.

The claimant stated that Mr. Jones could have prevented the accident since he had seen someone riding on that thing the day before and had not said anything.

The claimant stated he made an inspection of the motor car, push car and crab car before leaving on the 19th. He testified that he observed Mr. Weigel sitting on the push car before starting the motor car. He stated he did not ask Mr. Weigel to get off the push car.

G. M. Genzel, a Relief Foreman who was operating the crab car on the date in question, testified that David Weigel was in a bad spot. He testified he did not take exception, and he started to speak to Mr. Weigel about it, but at that time, the car started to move. He testified the crab derailed because the dog was let down.

Mark Marchant, B&B Carpenter First Class, testified that a dog on the crab caused the crab to derail.

The Board has examined the 42 pages of testimony, including the transcript of record and the claimant's closing statement, as well as the exhibits submitted by the parties.

The Union contends the claimant was not given a fair and impartial trial in that he was prejudged. The Union also contends that the evidence does not establish the claimant was guilty as charged. The Union further contends that even if the claimant was guilty, the discipline assessed is too severe.

The Board has carefully studied Rule 1435 in the Maintenance of Way Rule Book, and particularly that portion which states: "When track motor cars are coupled together, men must not sit with legs between cars and must not ride on push cars or trailers, unless such cars are equipped with seats and safety railings."

That portion of the rule which states that "men . . . must not ride on push cars or trailers, unless such cars are equipped with seats and safety railings" is definite and clear.

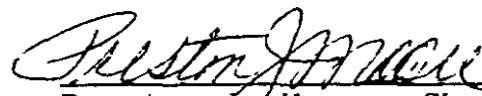
The Board recognizes that the Union points up that Mr. Jones saw a man riding on a car the previous day and did not caution anyone. After studying the testimony involved, the evidence indicates Mr. Jones did not have an opportunity to warn the foreman of those employees.

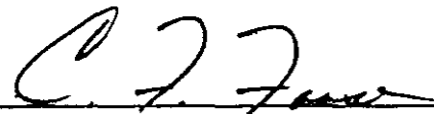
The claimant testified he did examine the equipment, and everything appeared to be in working order. However, the evidence clearly indicates that the dog was left down which caused the derail.

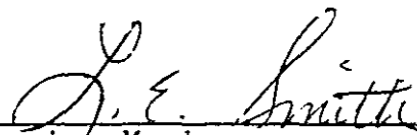
The Board finds there was sufficient evidence for the Carrier to find the claimant guilty under the circumstances. The rules authorize the Carrier to suspend the claimant pending an investigation. Sixty days suspension is a very severe penalty. However, the Board does not have the authority to supplant the judgement of the Carrier. The Board only has the authority to determine if the discipline assessed is harsh, arbitrary or unjust. Under all the facts herein the Board cannot so find.

AWARD: Claim denied.

Dated: July 21, 1989.


Preston J. Moore, Chairman


Union Member


Carrier Member