

PUBLIC LAW BOARD NO. 4823

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO) versus
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

"1. That the Carrier's decision to issue formal reprimands to Claimants Cordova, Kennedy and Townsley was unjust.

2. That the Carrier now remove the formal reprimands from Claimants' records as a result of investigation held October 16, 1990, because the Carrier did not introduce substantial, creditable (sic.) evidence that proved that the Claimants violated the rules enumerated in their decision, and even if Claimants violated the rules enumerated in the decision, formal reprimands placed on their Personal Record file is extreme and harsh discipline under the circumstances."

FINDINGS:

This Public Law Board No. 4823 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

On September 14, 1990, Carrier's Regional Manager wrote Claimants M. C. Cordova, W. D. Kennedy and R. B. Townsley, as well as Machipe Operators G. S. Garcia and F. P. Vigil, in pertinent part, as follows:

"You are hereby notified to attend formal investigation in Superintendent's Conference Room, 106 N. First St., Belen, NM, at 10:00am Friday, September 21, 1990, concerning alleged collision between Tamper 4721 and Ballast Regulator AT 4403 near Medler, NM, at approximately 1:40pm August 30, 1990; so as to determine the facts and place responsibility, if any, involving possible violation of Rules I and 5903 of the Safety and General Rules for All Employees, Form 2629 Std., in effect October 29, 1989, and Rule 1041 of the General Code of Operating Rules, Rules Maintenance of Way and Structures in effect October 29,

FILED
OCT 2 1990
ATM

"1989, as pertains to F. P. Vigil and M. C. Cordova; and Rules I and 5903 of Safety and General Rules for All Employees, Form 2629 Std., in effect October 29, 1989, and Rule 1051 of General Code of Operating Rules, Rules Maintenance of Way and Structures, effective October 29, 1989, as pertains to Messrs. W. D. Kennedy, R. B. Townsley, and G. S. Garcia."

The investigation was postponed and eventually held on October 16, 1990, following which Carrier found Claimants Kennedy and Townsley responsible for violation of Rule I of Safety and General Rules for All Employees and Rule 1051 of the General Code of Operating Rules, Maintenance of Way and Structures (for failure to control the movements of the machines under their jurisdiction), and Claimant Cordova responsible for violation of Rules I and 5903 of Safety and General Rules for All Employees (for failure to control the speed of his machine and stop in sufficient time to prevent the collision). Claimants Kennedy, Townsley and Cordova were issued reprimands for their responsibility, and, while Machine Operators Vigil and Garcia were not found responsible for violating any rule, they were issued "corrective letters."

The transcript of the investigation is quite lengthy; i.e., 52 pages. However, the testimony contained therein as to the conditions which prevailed at the site of the collision is essentially consistent. Vision was limited to approximately 200 feet (due to the sharp curve and brush, etc., obstructing the view) and the rail was slick, having been recently greased. Likewise, it appears from the record that communicating by radio in the area was virtually impossible. From the consistency of testimony it can be logically concluded that all involved were aware of the hazards inherent in operating their machines under the conditions which prevailed, yet it appears that only perfunctory (and obviously inadequate) precautions were taken to prevent a collision.

While all the principals involved in the investigation (and perhaps others as well) were culpable, to some degree (inasmuch as all could and should have done more to prevent the accident), after carefully considering all the testimony the Board finds that only the culpability of Foreman Kennedy was sufficient to warrant the assessment of discipline (a letter of reprimand). The Board's findings are based on its conclusion(s) that Foreman Kennedy was actually running the gang. All of the other principals, including Assistant Foreman Townsley, were following Foreman Kennedy's instructions. The conditions which prevailed at the location in question required a much greater supervisory effort than to just caution his men to be careful. Such

Case No. 29.....Page 3.....AWARD NO. 29

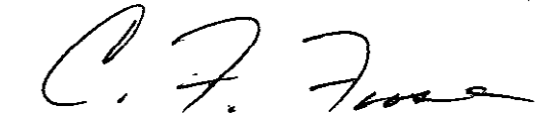
conditions usually mandate direct supervision; clear, detailed instructions as to the manner in which each machine is to be operated, and the supervisor being fully aware of the location of each machine at all times. Foreman Kennedy clearly failed to perform his supervisory duties in a responsible manner.

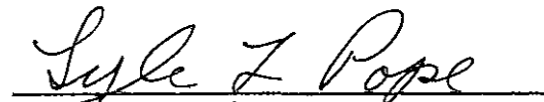
As indicated above, the Board finds that Claimant Kennedy was properly found responsible for violating the aforementioned rules, and the discipline assessed (a letter of reprimand) was appropriate for his responsibility in connection therewith. As concerns Claimants Townsley and Cordova, the Board finds that they were not sufficiently culpable to warrant the assessment of discipline. Accordingly, the letters of reprimand issued said claimants shall be removed from their personal record files, and "corrective letters" issued in lieu thereof.

AWARD: Claim sustained in part in accordance with the last paragraph of the Findings above.

ORDER: Carrier shall comply with the Findings of this Award within thirty (30) days from the date thereof.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Chicago, IL:

January 4, 1991