

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 264

Case No. 264
File 247-7012

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Union Pacific Railroad Company

Statement

of Claim: (1) Carrier violated Agreement Rule 12 when it dismissed Track Foreman R. Torres and Trackman J. Huerta effective June 3, 1985.

(2) Claimants Torres and Huerta should now be allowed eight hours pay for each workday, including any holidays falling therein and any overtime which would have accrued to them, beginning April 23, 1985, continuing until reinstated to service with seniority, pass and vacation rights unimpaired.

The Board has jurisdiction of this case.

Claimants and Trackman Bunton, on April 22, 1985, were the occupants of motorcar No. C2343 operated by the Foreman of Track Gang 5367, R. Torres. Foreman Torres secured track time from the Dispatcher authorizing him to occupy the main line track from 2:25 PM until 3:15 PM from the north end to Goodwin to the south end of Kyle. Motorcar, No. C2343, at approximately 2:45 PM, operated in a northerly direction and approached the north switch at Centex, a remote control and facing point switch. The motorcar going through the north switch at Centex at MP 206 pole 24 derailed throwing its three occupants out, one was killed. Mr. Torres admitted that the motorcar was travelling 20 MPH, 15 to 20 MPH on April 22nd. He advised that the proper motorcar operation required, as here, over any remote control switch, that the said motorcars are required to stop and then proceed over the switch at a walking speed of not over 4 MPH.

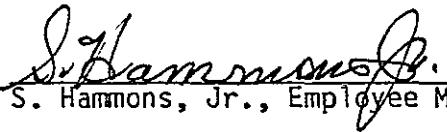
Claimant Huerta, as in our Award No. 281, appears to be a victim of the application of the doctrine of res ipsa loquitor. He was there when the incident occurred. Thus, Carrier inferred negligence to Trackman Huerta simply because the incident happened. Also, as in Award No. 281 Huerta was a passenger.

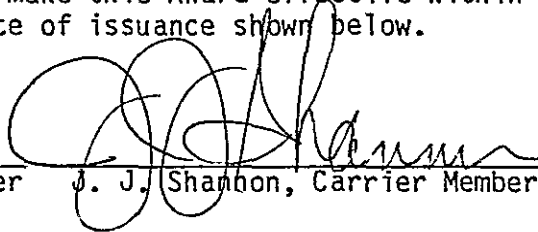
The claim of Trackman J. Huerta should be qualifiedly sustained. He suffered an on duty injury and, as is his right, instituted a FELA action. In his petition Huerta asserted loss of earnings because of his injuries. Hence, time lost becomes measurable against the time when Claimant otherwise was able to perform service. Carrier is entitled to make the customary offsets, including outside earnings, if any.

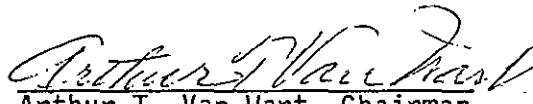
There are circumstances that mitigate in favor of Torres, such as his 13 years of good service, he has been off almost 3 years, and the gauge of the 30 foot switch and the alleged practice of the operations of light motorcars in similar circumstances. Torres is to be provisionally reinstated, with all rights unimpaired but without any pay and placed in a 12 months probationary status, subject of course, to passing the necessary return to service examinations.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


S. Hammons, Jr., Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued May 28, 1988.