

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 301

Case No. 301

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Union Pacific Railroad Company (former Missouri Pacific Railroad Company)

Statement of Claim: Carrier violated the current working agreement, especially Rule 12, when Track Foreman J. W. Bynog was dismissed from the service effective May 9, 1986.

Track Foreman Bynog should now be allowed 8 hours' pay for each work day, including any holidays and any overtime which would have accrued to him had he not been dismissed beginning April 3, 1986, continuing until reinstated to service with seniority, pass and vacation rights unimpaired.

Findings: The Board has jurisdiction of this case by reason of parties Agreement of January 5, 1959.

Claimant, on April 3, 1986, was operating Motor Car C-455, patrolling and inspecting track with a fellow gang member J. L. White. The Motor Car was operating east with Trackman White positioned in the rear of the vehicle facing the rear. White was inspecting track and providing rear-end protection. As the Motor Car approached a grade crossing near mile post 206.8 on the Shreveport subdivision, a 1973 white 18-wheel tractor-trailer loaded with sand entered the grade crossing prior to Claimant's motor car arriving there and a collision occurred at approximately 8:00 AM. Both Claimant and Trackman White were seriously injured and were taken to a nearby hospital.

As a result a formal investigation was held in connection therewith. Carrier concluded therefrom that Claimant was culpable. He was dismissed from service as discipline therefor.

Claimant was accorded the due process to which entitled under Rule 12.

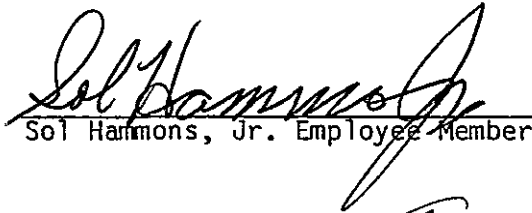
There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. Carrier concluded that as a result of Claimant's failure to operate the motor car in conformity with the rules, that he was responsible for the collision between the motor car and the highway vehicle. While Claimant said that he was travelling

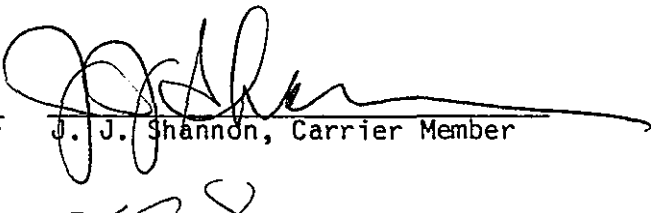
at the rate of 5 MPH at the point of impact, it appears that he was travelling 20-25 MPH.

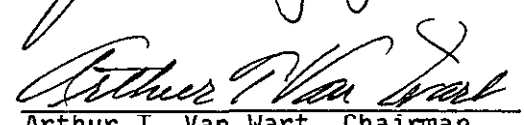
The Board, will renew Carrier's leniency offer of October 13, 1986 which he unwisely rejected. Nevertheless, Claimant will be reinstated to service with all rights unimpaired but without pay subject to his passing the necessary return to service examinations, including physicals.

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.

  
Sol Hammons, Jr. Employee Member

  
J. J. Shannon, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued November 15, 1988.