

BEFORE  
PUBLIC LAW BOARD NO. 717

Carrier's File: R-21081  
Organization's File: L-1289-D-776

AWARD NO. 578  
(Case No. 578)

UNITED TRANSPORTATION UNION

vs.

BURLINGTON NORTHERN RAILROAD COMPANY  
(Former SL-SF Ry. Co.)

STATEMENT OF CLAIM:

Claim of Car Retarder Operator R. W. Conner, Tulsa Terminal, for pay for all time lost beginning August 6, 1979 up to and including September 5, 1979, pay for attending the investigation conducted July 31, 1979, and restitution of any loss of fringe benefits.

JURISDICTION:

The jurisdiction of this Board is stated in its Award No. 1. That statement is incorporated herein by reference thereto.

OPINION OF BOARD:

Claimant was cited for investigation concerning an incident when a car was side-swiped while being humped in a classification track at Cherokee Yard.

Claimant was told that he had possibly violated certain rules in handling the cars, and rule providing for the filing of accident reports. He was suspended for 30 days.

It is the position of the organization that conditions of equipment were at fault and that the maintainer who would have been an authority on the subject was not called. Claimant was asked about the condition of equipment and testified as best he could.

The record tells us that the carrier offered, after 16 days, to reinstate claimant but would not allow him to proceed with his claim for time lost. That action by the Carrier clearly tells us that it was the Carrier's opinion that the discipline was, or should have been, 16 days suspension.

We find no copy of the accident report in the record. We cannot evaluate the organization's charge that it was complete to the satisfaction of the rules, which say claimant must include the information as he knows it.

From this record we can surely say that a car was damaged; we cannot form an educated judgment as to the condition of the equipment because we have no expert testimony on which to rely. We cannot evaluate the report, for it is not available. Both of these were the responsibility of the Carrier in making its case. Not having accomplished its task, we have no recourse but to reverse the findings.

FINDINGS:

Public Law Board No. 717, upon the whole record and all the evidence, finds and holds:

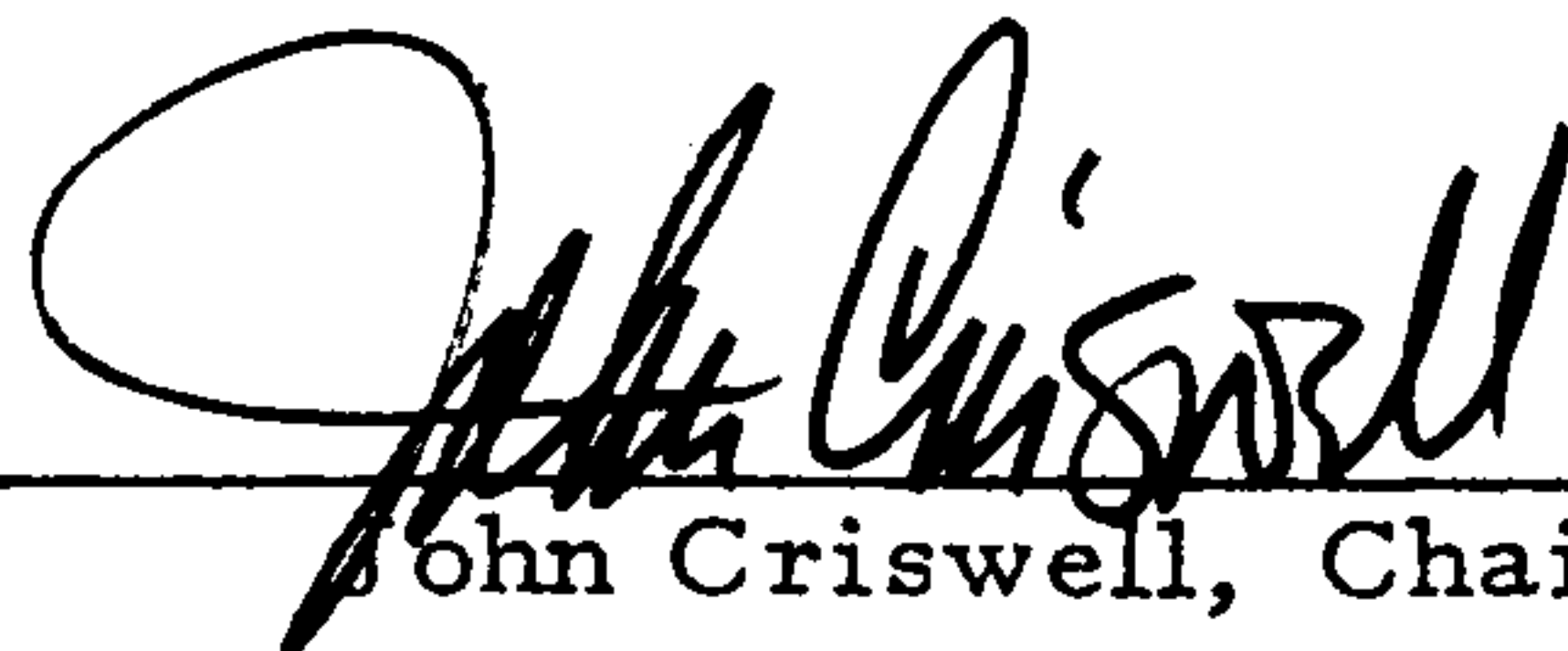
1. That Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;
2. That this Board has jurisdiction over the dispute involved herein; and
3. That the Agreement was violated.

AWARD

Claim sustained.

ORDER

Carrier is directed to make this award effective on or before 30 days from date.



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John Criswell, Chairman  
Neutral Member

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L. R. Burk  
L. R. Burk, Carrier Member

J. A. Alford  
J. A. Alford, Employee Member

Dated at Springfield, Missouri, this 29th day of September, 1984.