

Award No. 76
Case No. 76
NNG-7605

Public Law Board No. 2424

PARTIES
TO
DISPUTE:

United Transportation Union

and

The Chesapeake and Ohio Railway Company

STATEMENT
OF
CLAIM:

This will serve as appeal to the 10-day overhead suspension for three months assessed to Conductor Harold Post and Flagman Don Host as a result of hearing held on May 21, 1980 in the office of S. N. Hockin, Trainmaster, Wyoming. The Carrier found the claimants responsible for track and car damage between MP 72.2 and MP 68.9 on the Plymouth Subdivision on May 8, 1980... 'as result of your failure to detect original derailment at MP 72.2 and failure to look back frequently to see if track or roadway structure had been damaged, in violation of Rule 811 of the C&O Book of Operating Rules'..."

FINDINGS:

At 10:50 a.m. in the course of a trip in Michigan, TrainDT-10 went into emergency when four of its cars derailed. About three miles before that point, another car had derailed but that development had remained unnoticed until the train went into emergency.

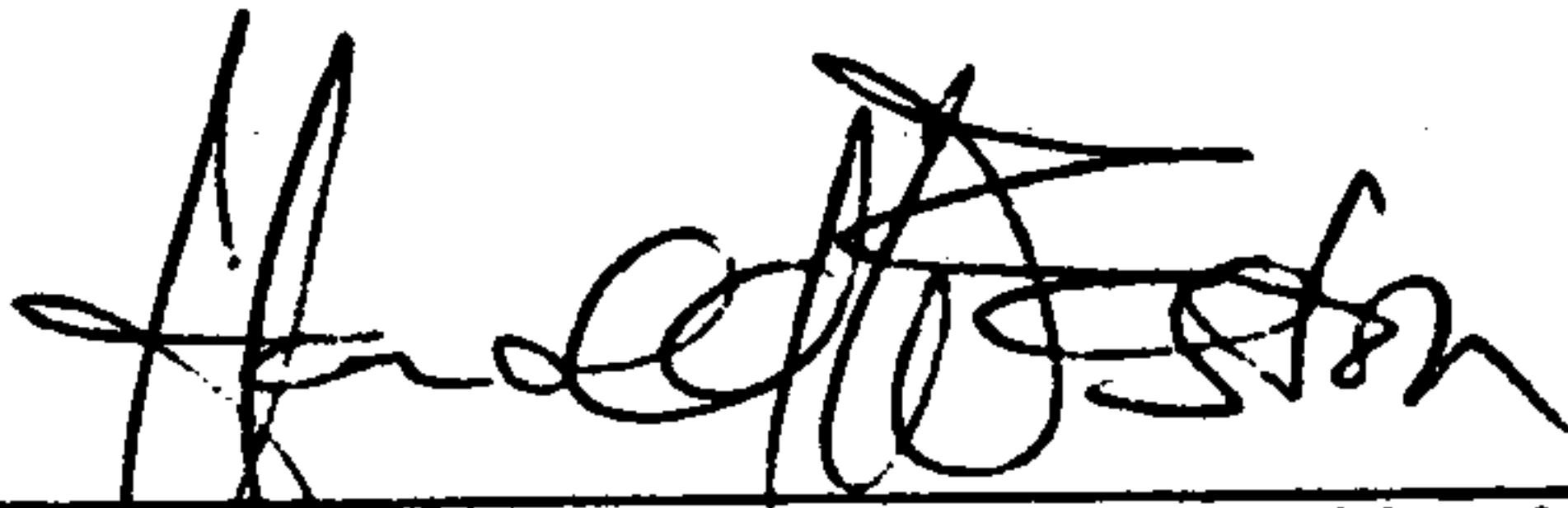
Claimants, after a hearing had been held in the matter, were given 10-day overhead suspensions for failure to detect the original derailment and failure to look back frequently "to see if track or roadway structure had been damaged." Both men were in the caboose cupola during the time in question.

Carrier's finding that negligence on claimants' part was a contributory cause of the derailment is not supported by substantial credible evidence. The evidence is that the night was very dark and that straight track were involved. It has not been established that claimants reasonably could have observed the tracks sufficiently at that time of the night to have detected track damage.

In this setting, there is no basis for suspending the conductor, who has 34 years service, or the brakeman with 25 years service in these circumstances.

AWARD: Claim sustained. To be effective within thirty days.

Adopted at Baltimore, Maryland, May 9, 1984.



Harold M. Weston, Chairman



Carrier Member



Employee Member

