

**Award No. 6191
Docket No. 6045
2-CRI&P-FO-'71**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Fireman and Oiler J. O. Garcia, Silvis, Illinois, was improperly and unjustly assessed a letter of reprimand placed on his personal record.

2. That accordingly, the Chicago, Rock Island & Pacific Railroad Company be ordered to remove this letter of reprimand from the personal record of J. O. Garcia and clear his record accordingly.

EMPLOYEES' STATEMENT OF FACTS: Fork Lift Truck Driver J. O. Garcia, hereinafter referred to as the claimant, entered the employment of the Chicago, Rock Island & Pacific Railroad Company, hereinafter referred to as the carrier, some twenty-eight (28) years ago and has remained in continuous service ever since.

Under date of June 2, 1969, the following notice of investigation was jointly addressed to the claimant, Mr. M. S. O'Klock and Mr. W. Hoffman:

“Mr. M. S. O'Klock
1033 'A' Street
Silvis, Illinois 61282

Mr. W. Hoffman
514 - 20th Street (Apt. 4)
Moline, Illinois 61265

Mr. J. O. Garcia
226 - 17th Street
Silvis, Illinois 61282

You are hereby notified that a formal investigation will be held in the Conference Room, Superintendent's Office, Silvis, Illinois at

9:00 A. M. - Friday
June 6, 1969

routine but necessary checks cannot be absolved because the Foreman and the fellow worker did not also meet their required standards of due care. In brief, the Claimant, as an experienced journeyman, cannot be excused from carrying out reasonable and necessary precautionary measures required by the operations he was performing because of the alleged delinquencies of his fellow workers."

The petitioning organization while progressing this claim on the property failed to prove that the discipline assessed in the instant case was arbitrary or capricious. The record contains evidence of probative value sufficient to sustain the minor disciplinary action taken in claimant's case. What petitioner would have this Board do is substitute its judgment for that of the Carrier. This the Board will not do. Second Division Awards 4614 (Williams), 5183 (Harwood), and 5400 (Kane), among others.

In conclusion, the carrier submits that the official letter of reprimand assessed claimant's personal record was supported by the evidence adduced at the investigation. The discipline in this case was lenient and in keeping with Carrier's managerial prerogative. This discipline should not be disturbed. The Carrier respectfully requests that this claim be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, J. O. Garcia, was notified by Carrier that a formal investigation would be held in the Superintendent's Office Conference Room on June 6, 1969 "to develop facts, discover the cause, determine your responsibility, if any, in connection with Engine 1265 and Engine 199, striking fork lift truck No. 623 at the Diesel Pit, Silvis, Illinois, at approximately 11:45 A.M., May 29, 1969, during tour of duty resulting in personal injury to Mr. J. O. Garcia and damage to fork lift truck No. 623 and violation of Operating Rules, Safety Rules, and/or Special Instructions, if any, in connection therewith."

Claimant was assessed with an official Letter of Reprimand, from Carrier's Superintendent, which reads as follows:

"Silvis, Illinois

June 23, 1969

File: PI-930

LETTER OF REPRIMAND

Mr. J. O. Garcia
226 - 17th Street
Silvis, Illinois 61282

Dear Sir:

Your record this date is being assessed with this Official Letter of Reprimand account of your violation of Safety Rules 19, 'Employee must acquaint themselves as to the location of structures or obstructions where clearances are close, and watch for cars or engines on adjacent tracks', and 191, paragraph (f), 'Look in both directions before driving across tracks, and never drive closely in front of moving trains, engines or cars' [incorrectly identified in transcript as Safety Rule 190, paragraph (f)], as developed in formal investigation held at Silvis, Illinois, June 17, 1969.

Transcript shows you properly protected the equipment in your charge by stopping engine movement on track you were fouling. Then after putting your machine in clear you again fouled a track upon which there was an engine movement, causing an accident and damage to your equipment. If you intended to again foul this track after once putting your machinery in the clear, it was your responsibility to have a correct verbal understanding with the employee operating the engine as to when you would clear his move completely rather than give him a clear track and then foul his move after you were out of his sight.

In the future I will expect you to properly comply with all Safety Rules in the performance of your duties and the protection of yourself and equipment in your charge. Violations of this type will neither be overlooked or treated lightly.

/s/ F. J. Garner

cc: T. F. Kelly
F. J. Meyer
C. Garcia L/C Boff&O"

Claimant was working as a laborer at the wash rack at the Diesel Pit, Silvis, Illinois on the date in question. Claimant was unloading cleaner by hand from a fork lift truck at the wash rack, after bringing the washing compound to the wash rack on the fork lift. Claimant testified that his fork lift truck was not in the clear of the middle track when he first saw two Diesel engines headed east on the middle track. Claimant further testified that he immediately gave a stop sign to the Hostler operating the Diesels and stopped them before they reached him at about 4 feet from the beginning of the wash rack, with claimant's fork lift truck at this time located at about the middle of the wash rack. Claimant testified that he then backed his fork lift truck west toward the Diesels in order to clear the middle track, and when his lift truck was about 2 feet from being in the clear of the middle track the Diesels started up again and hit the cab of the fork lift truck, pinning claimant between the wheel and the cab. Claimant further testified that 4 light poles are located between the middle track and the wash rack track, requiring a fork lift truck to be driven toward the middle track in order to pass said light poles, and thus fouling the middle track in the process. This latter statement of claimant was confirmed by Carrier's Assistant Master Mechanic, E. M. Dobbels. In addition, Carrier's Labor Foreman, J. E. Merrill, testified that an additional obstruction, between the middle track and the wash rack that would hinder a fork lift

truck from clearing the middle track, is a concrete filler approximately 30 inches square and 15 inches wide, as well as a concrete curb 6 inches wide and 8 inches high and parallel to the wash track.

Hostler Helper W. Hoffman testified that he didn't witness the accident; that his duties are to make sure that the Hostler is in the clear and able to move the engine safely by throwing switches and giving him signals; that he wasn't in the cab of the Diesel or saw the accident because the Hostler had ordered him off to line up the other switches for engines that the Hostler was going to bring in from the wash track.

Hostler M. S. O'Klock testified that he was taking an engine down the middle track when he was stopped by claimant because his fork lift truck was parked in the foul; that claimant was staying in the clear, so he whistled off, turned on the bell, and started down the middle track when he heard something hit the side of the engine and stopped; that claimant turned his truck from the north to the east and started backing down and was staying in the clear while clearing the middle track.

It appears from the record that claimant did comply with Safety Rule 19 by acquainting himself as to the location of obstructions where clearances are close and he did watch for cars or engines on adjacent tracks. This is clearly seen when he flagged down the Diesel in question when he saw it approaching his fork lift truck that was fouling the middle track at the time.

In regard to an alleged violation of paragraph (f) of Safety Rule 191, which provides: "Look in both directions before driving across tracks, and never drive closely in front of moving trains, engines or cars.", it is seen that claimant did not drive across a track and did not drive closely in front of a moving engine. (Emphasis ours.) Claimant stopped Hostler O'Klock for the sole purpose of permitting him to move his fork lift truck from fouling the middle track at any point. Hostler O'Klock, without justification, took it upon himself to move his Diesel locomotive without first ascertaining whether claimant had moved his fork lift truck completely in the clear of the middle track. This action on the part of Mr. O'Klock was dangerous indeed, more so because his Hostler Helper was off doing other duties at Mr. O'Klock's direction. Mr. O'Klock apparently assumed that once he saw claimant in the clear, clearing the middle track, claimant would remain in the clear, an assumption extremely hazardous under the circumstances then and there existing.

Therefore, this Board finds that Carrier failed to meet its burden of proving by substantial evidence that claimant was guilty of violating the aforesaid safety rules, and we must thus sustain the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 5th day of November, 1971.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.