

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(System Council No. 7
(
(Boston and Maine Corporation

Dispute: Claim of Employes:

1. That under the current Agreement, the Boston and Maine Corporation has unjustly suspended Lineman James F. Maloney fifteen (15) working days without pay and entered thirty-six (36) demerits in his service record; made effective by notice of discipline dated November 18, 1981.

2. That accordingly, the Boston and Maine Corporation be ordered to restore Lineman James F. Maloney to service with seniority rights unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Lineman's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and to expunge his record.

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 employes 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.

The events that led to this dispute occurred on October 12, 1981, when the Claimant, a Lineman who was a member of a crew of three driving to their work site in a Company vehicle picked up a passenger who was not employed by the Carrier. It followed that an accident involving only the Company vehicle occurred. There were no citations issued by police authorities to the driver of the vehicle who, at the time of the accident, was not the Claimant. Following the accident, the Claimant completed a personal accident report at the request of the Carrier. The Carrier charged that the Claimant violated two of its Rules. The first was related to the presence of an unauthorized passenger in

the vehicle at the time of the accident, and the second was related to his failure to report the presence of the passenger in his accident report. Following an investigative hearing, the Claimant was found guilty of the charges and was suspended fifteen (15) working days without pay and assessed twenty-four (24) demerits to be entered on his service record.

The Organization, on the property, raised the contention that the Claimant was denied a fair and impartial trial, essentially on the basis of the Hearing Officer's role and the failure of the Carrier to conduct a separate trial concerning the Claimant only. The Organization also holds that the Claimant was not aware of the Rule which required him to report violation of Carrier's Rules (i.e., the presence of the passenger) and further, it contends that there was no evidence to show that the Claimant stated anything which was untrue on the face of the personal injury report completed by him.

In its submission to the Board, the Organization raised certain new procedural contentions, particularly with respect to the demerit system, which we did not consider because they were not raised on the property. Furthermore, we find no showing that the investigative process prejudiced the Claimant's interests.

With respect to the Claimant's knowledge of the Rules, in July 1978 he attended classes on the Rules of the Operating/Engineering Department for promotion to Signalman. The Rules pertaining to the specific issues herein were a part of those classes. Although, as an employee of the Electrical Department, to which he was assigned at the time of the incident, he had not received recent Rule instruction, nevertheless, the record shows that this Claimant had been instructed in the pertinent rules earlier. His testimony also provides sufficient evidence that he was aware that the presence of the non-employee passenger was contrary to the Carrier's Rule. Moreover, the Carrier's conclusion that the Claimant should have known it was unacceptable to allow a non-employee to be a passenger, irrespective of Rule knowledge, as stated in our Award 9838, is not an unreasonable one.

With respect to the Claimant's role and responsibility relative to the incident, the Board notes that he called the non-employee and arranged for the pick-up. He was also the driver to the pick-up site. Therefore, he shares a significant degree of responsibility for the presence of the non-employee passenger in the Carrier's vehicle. Consequently, although the Board does not have in the record before it the personal injury report completed by the Claimant, his testimony indicates that he did not factually complete the report. Given the significant role he played and his knowledge, as evidenced by the record, that his actions were violative of the Carrier's Rules, the discipline imposed will not be disturbed.

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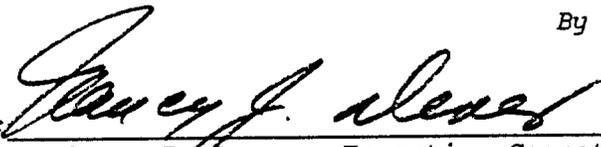
Award No. 9840
Docket No. 9905
2-B&M-EW-'84

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 4th day of April, 1984