

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13488

Docket No. 13375

00-2-98-2-65

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(International Association of Machinists and Aerospace
(Workers

PARTIES TO DISPUTE:(

(The Burlington Northern Santa Fe Railway Company
(former Atchison, Topeka and Santa Fe Railway Company)

STATEMENT OF CLAIM:

“Dispute - Claim of Employee:

That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the “Carrier”) violated Rule 40 of the Controlling Agreement, Form 2642-A std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it wrongfully and unjustly issued a Level One - Formal Reprimand to Amarillo, Texas Machinist Steve Sisneros (hereinafter referred to as the “Claimant”) cited in violation of various Carrier Rules for alleged damage to a Company Vehicle AT-94162 on August 9, 1997.

Accordingly, we request that for this improper discipline, he be compensated for all lost time and benefits, if any, as provided for in Rule 40(i) of the Controlling Agreement, as amended. Additionally, we request that all records and reference to this matter be removed from his personal 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

As a result of an Investigation held on September 25, 1997, the Claimant, an 18 year Machinist working at the Carrier's Amarillo, Texas locomotive service facility at the time in question, was found guilty of violating Rules S-1.2.3, 12.8 and 28.1 when he damaged a Company vehicle on August 9, 1997 and was assessed a Level One, Formal Reprimand. The Instant Claim, filed on November 5, 1997, protests such action.

A review of the transcript of the Investigation reveals that the facts concerning the incident are not really in dispute. The Claimant was sent to get a gasket from another facility for a repair to a locomotive he was working on. He arrived at the Carrier's Eastern facility, an area with which he was unfamiliar, and parked the Company truck next to a triangle of guard poles protecting a vent pipe. When he returned from getting the part, he approached the truck from the driver's side and walked toward the tailgate, looked over and behind the truck and only saw a 6 foot pole behind the vehicle. He did not walk around the rear of the vehicle and noticed no other obstacles. When he backed up the truck, the rear passenger side bumper and fender scraped against one of the two shorter poles that he had not seen which were attached to the guardrail and larger pole. The Claimant phoned his Supervisor, who came to the site and conducted an Investigation. Supervisor Dunlap testified that the damage incurred was a 12 inch dent in the fender, a crack in the taillight and yellow paint on the bumper. The Claimant stated that the taillight was cracked when he got the truck and that other dents were on the vehicle as well. The Claimant explained that he could not see the two shorter poles from his driver side view since the truck was blocking them, and he saw only the 6 foot pole which he avoided. The Supervisor characterized the Claimant as an excellent employee.

The Carrier charged the Claimant with violating the following Safety Rules:

“S - 1.2.3 Alert and Attentive

Assure that you are alert and attentive when performing duties.

S - 12.8 Backing

Position the vehicle, when possible, to avoid backup movement.

Before backing, inspect areas to the rear to ensure that no persons or obstructions are in the path of movement.

S-28.1 Safety

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.”

The Carrier argues that the Claimant admittedly damaged the Company truck by failing to safely inspect the area to the rear of the vehicle before backing up, and that a Formal Reprimand was warranted for a violation of the above-cited Safety Rules. The Organization contends that the Carrier has failed to show that the Claimant acted unsafely, or was not alert or attentive when the unfortunate incident occurred. It avers that the Claimant did follow the safety rules but was unable to see the shorter pipes over the back of the truck. The Organization argues that the shape of the truck before the Claimant took it shows that others had incurred the taillight damage as well as larger dents, and the Claimant should not have been held responsible.

A careful review of the record convinces the Board that the Carrier has sustained its burden of proving that the Claimant violated the noted Safety Rules on August 9, 1997 when he backed up the Company truck into a vertical guard pipe. The Claimant admitted passing the triangular shaped guard railing with both tall and shorter poles on his way into the facility, and it is clear that he did not inspect the rear of the vehicle in its entirety before backing it up, as required by S-12.8. While it is unfortunate that the Claimant did not see the shorter poles when he looked to the rear of the truck, and it is clear that he acted appropriately thereafter in contacting his Supervisor and requesting an Investigation, the fact remains that the damage to the truck was caused by the

Claimant's failure to exercise the degree of care necessary to "ensure that no . . . obstructions are in the path of movement" as required by S-12.8. Under such circumstances, there is no basis for us to overturn the discipline imposed by the Carrier in this case.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of April, 2000.