

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13955
Docket No. 13840
08-2-NRAB-00002-070029
07-2-29

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

**(Brotherhood of Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13.1, when Carman Neil Leveille arbitrarily was suspended for three (3) days as result of damaging Road Truck 1460 while repairing freight cars.**
- 2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carman Neil Leveille in the amount of three (3) days at the straight time rate of pay for arbitrarily violating Rule 13.1. This is the amount he would have earned had the Carrier not violated the Agreement.”**

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.

On April 25, 2006, Carrier notified Claimant to appear for a formal Investigation on May 4, 2006 concerning the following charge:

“This Notice of Hearing is issued to develop the facts and place your responsibility, if any, in connection with the incidents outlined below:

Violation of Springfield Terminal Railway Company Safety Rules 331 and 352.

Safety Rules 331:

“Motor vehicles must be operated in a safe manner regardless of the urgency, or importance of the mission.”

Safety Rules 352:

“Drivers must know there are not any obstructions before moving vehicle.”

Specifically, on the afternoon of Saturday, 4/22/06 at approximately 13.00 hours, you were operating Road Truck 1460 for the routine process of repairing freight cars on #20w or #21w. You sideswiped a freight car, causing extensive damage to the Driver’s door on the Road Truck 1460.”

On May 17, 2006, Claimant was notified that he had been found guilty as charged and was assessed a three day working suspension.

It is the position of the Organization that Carrier erred in suspending the Claimant. Although the Claimant admitted he dislocated the truck mirror it argues that other employees had been involved in similar incidents with no formal

Investigation being called, therefore, it suggest that Claimant who had a clean work record was subjected to disparate treatment.

Carrier argues there is no validity to the Organization's arguments. It submits that Claimant is guilty as charged. It argues there was substantial evidence produced at the Hearing which proves that on the afternoon of Saturday, April 22, 2006, at approximately 1:00 p.m. while operating Road Truck 1460 in the process of repairing freight cars on #20w or #21w Claimant sideswiped a freight car, causing extensive damage to the Driver's door. Lastly, it argues that the discipline was not too severe.

The Board has reviewed the transcript and record of evidence and finds that Claimant testified that he misjudged the distance between the freight car and the truck stating: "Yes. I can't dispute the second charge, that I cannot dispute." In a effort to clarify the Claimant's statement the Hearing Officer asked the Claimant if believed he was in violation of Rule 352. He responded by stating: "Correct". The aforementioned statements were an admission against the Claimant's interest.

The Claimant further testified that Mr. Sibley his Groundman had guided his earlier moves during the day without incident, but in this instance he chose to make the move without the assistance of a Groundman. The Hearing Officer asked him the following: "In hindsight, do you think you should have asked Mr. Sibley to come over and be your ground man? The Claimant's replied by stating: "Probably." Safety Rule 331 requires employees to operate vehicles in a safe manner, it is clear that in this instance the Claimant did not follow that directive. Coupled with his admission of guilt regarding Safety Rule 352, the Carrier has met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the suspension was appropriate. The Organization argued that Claimant was subjected to disparate treatment. Testimony offered by the Claimant at the Investigation made vague references to other like accidents were employees allegedly were not disciplined, but because nothing was offered to substantiate those allegations it cannot be considered. The Board finds and holds that a three day suspension is appropriate in this instance

Form 1
Page 4

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because it was not arbitrary, excessive or capricious. The discipline will not be set aside.

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 23rd day of October 2008.