

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13966
Docket No. 13856
08-2-NRAB-00002-080009**

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 the carrier arbitrarily assessed the record of Carman Mark Williamson with a three (3) day suspension as a result of a hearing held on March 15, 2007.**
- 2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman Mark Williamson in the amount of three (3) days at the straight time rate of pay and expunge from the record of Carman Mark Williamson any information regarding this investigation. This is the amount that he would have to be compensated 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 February 21, 2007, Carrier notified Claimant to appear for a formal Investigation on March 6, 2007 which was postponed and subsequently held on March 15, 2007 concerning the following charge:

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

Violation of Rule 331: Motor vehicles must be operated in a safe manner regardless of the urgency or importance of the mission.

Violation of Rule 352: Drivers must know there are not any obstructions before moving vehicles.

Your responsibility for a vehicle accident occurring on February 9, 2007 at Madison, Maine while you were driving Company vehicle #3585, resulting in substantial damage to another employee’s personal vehicle.”

On April 9, 2007, Claimant was notified that he had been found guilty as charged and was assessed a three day suspension without pay.

It is the Organization’s position that the Carrier erred in suspending the Claimant for allegedly improperly operating a motor vehicle in an unsafe manner. It argues that weather conditions made the accident unavoidable which is why the vehicle Claimant was operating slid into another car. Additionally, it argued that the Carrier’s Investigation was not fair and impartial because the Hearing Officer badgered the Claimant with repeated questions and read his Personnel Record into the transcript. The Organization concluded by arguing that the discipline assessed was not appropriate and should be rescinded.

It is the position of the Carrier that on the date in question Claimant was negotiating a turn in the parking lot and the rear of the trailer attached to a truck slid, making contact with an Engineer's private vehicle. It argued that regardless of the weather conditions or clearances, Claimant was responsible for the accident. He was the only driver involved, so this accident did not happen to him, but was caused by him, because of his actions alone. It further argues that Claimant is an experienced driver and his driving skills are not in dispute, but in this instance he should have considered the conditions of the parking lot and the location of any other vehicles, prior to moving the truck he was driving. Simply stated, Claimant's poor judgment resulted in an accident which was a violation of Rules 331 and 352. Last, it argued that the discipline assessed was justifiable and appropriate and should not be disturbed.

The Board has reviewed the record of evidence and finds no merit to the Organization's argument that Claimant was deprived of a fair and impartial Investigation because it is clear that the Organization was not hindered in his defense.

The dispute will be resolved on its merits. The facts reveal that Claimant was making a turn in the Carrier's parking lot while driving a truck pulling a trailer when the rear of the trailer slid, colliding with another employee's personal vehicle doing \$1,749.74 worth of damage. According, to witnesses' testimony the temperature was approximately zero degrees and the conditions of the parking lot was slippery in spots. It is clear from the record that Claimant did not take into consideration the conditions of the parking lot or the location of any other vehicles prior to moving the truck. The accident involved one driver whose actions resulted in the collision between the company vehicle he was operating and a stationary vehicle that was parked in the lot. The fact that the truck may have slid during the accident does not excuse the Claimant for bearing responsibility for his actions which could have been avoided if he had performed his work differently. The Carrier has met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the three day suspension was appropriate. At the time of the offense the Claimant had two years of service which included a Formal Reprimand for a motor vehicle accident a little over 30 days prior to the instant case. The Board finds and holds that the suspension was

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appropriate 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.