

**Award No. 3214**

**Docket No. 3043**

**2-AT&SF-EW-'59**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That under the current agreement Division Lineman A. G. Pepler was unjustly treated when his personal record was assessed 30 demerits.

2. That accordingly the 30 demerits be stricken from his personal record.

**EMPLOYES' STATEMENT OF FACTS:** A. G. Pepler, hereinafter referred to as the claimant, is employed by The Atchison, Topeka & Santa Fe Railway System, hereinafter referred to as the carrier, as a division lineman in the communications department.

The assigned headquarters of the claimant in San Bernardino, California, his assigned working hours are 7 A. M. to 4 P. M., and he is paid on a monthly basis. He has held this assignment for over 14 years and has been an employe of the carrier for over 33 years.

On Thursday, January 31, 1957, a rail motor car operated by the claimant was struck by a private passenger automobile at a street crossing in the City of San Bernardino, California.

On March 8, 1957, an investigation was held, and as a result thereof, the claimant's personal record was assessed with 30 demerits.

This dispute has been handled with all officers of the carrier designated to handle such disputes including the highest designated officer of the carrier; all of whom have declined to make satisfactory adjustment.

to comply with the ex parte rules of the Carrier issued for the safe operation of motor cars."

To this statement the carrier takes exception. The record reveals that since claimant's employment on the coast lines as a lineman, June 1, 1924, claimant has been involved on 10 different occasions with his motor car:

May	25, 1926—	Motor car struck by motor car operated by section foreman, section foreman accepting responsibility. . . . .	....
October	15, 1926—	Motor car struck and demolished by an extra west . . . . .	15 demerits
October	4, 1929—	Collided with section foreman's motor car . . . . .	20 demerits
December	9, 1941—	Ran through derail east end Orwood drawbridge . . . . .	....
October	7, 1943—	Admonished for running through open derail at Colton . . . . .	....
October	24, 1950—	Admonished for trailing a west-bound extra 50 ft. behind caboose. . . . .	....
November	9, 1950—	Motor car struck by truck at grade crossing . . . . .	....
March	18, 1953—	Motor car struck by Union Pacific extra west . . . . .	30 demerits
August	10, 1956—	Ran through crossover switch to main line . . . . .	....
January	31, 1956—	Motor car struck by automobile, San Bernardino . . . . .	30 demerits

In addition to the above, claimant was injured on August 4, 1929 when his motor car was derailed due to striking a dog lying in the middle of the main track.

The above record indicates that the claimant is not careful in the operation of a motor car and his record is not a "splendid" one, insofar as the operation of motor cars is concerned.

In the investigation reference is made by claimant and his representatives to the fact that although the motor car carried flagging equipment, he could not flag the crossing. Naturally one man cannot flag a crossing to insure the safe passage of the motor car. However, there certainly was no reason why claimant could not have waited and yielded the right of way to the highway traffic until the crossing was sufficiently clear for the passage of his motor car.

In closing, the carrier wishes to reaffirm that the allegation of the organization that claimant was "unjustly treated" is without foundation and is of the opinion that your Honorable Board can have no other recourse than to deny the request that the 30 demerits be stricken from claimant's 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 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 were given due notice of hearing thereon.

The transcript of investigation herein discloses that claimant after stopping his motor car, slowly entered a street and was involved in a collision. He demonstrated the degree of caution required by the rule. The mere fact of a collision does not of itself prove that either party involved has failed to yield the right of way. That conclusion must be drawn from all the surrounding facts, having to do with who entered the intersection first, how fast each was going, and which could or could not stop to avoid a collision.

From the record we conclude that no culpability should attach in the absence of some showing of wrong-doing.

#### AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1959.