

Award No. 4329

Docket No. 4287

2-ACL-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That under the current agreement B. C. Farthing, was unjustly suspended from service beginning on March 6, 1961 through and including April 30, 1961.

That accordingly the Carrier be ordered to remove this unjust suspension from Mr. Farthing's service record and compensate him for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Telephone Maintainer, B. C. Farthing hereinafter referred to as the claimant is employed by the Atlantic Coast Line Railroad, hereinafter referred to as the carrier, in its Communication Department.

February 2, 1961, the claimant's motor car was struck at the Howard Street Crossing (Atlanta, Georgia) by an automobile driven by Mrs. Clara Singleton.

Under date of February 7, 1961, a letter was sent to the claimant notifying him that he was being charged with the violation of Chief Engineer Communication and Signaling Circular No. 200.

The hearing was held for the Claimant involved in the collision of the Motor Car at Atlanta, Georgia, on February 14, 1961, as scheduled.

Under date of February 24, 1961, Mr. F. M. Craven, Telephone Supervisor, directed a letter to the claimant advising him he had been given a suspension beginning on March 6, 1961, through and including April 30, 1961.

This dispute has been handled with the carrier officials designated to handle such affairs, who all declined to adjust this matter.

The agreement effective August 15, 1944, as subsequently amended is controlling.

"We think the evidence shows that he had violated reasonable rules of his employers designed for the safety of all the operatives of the railroad, and the better protection of the public, and his employers, as a matter of law, had the right to discharge him for such disobedience of its rules."

At the investigation and in handling the claim on the property the organization took exception to the hearing accorded claimant on the basis that no specific or precise charge was brought against him. Obviously, this exception was not well grounded as Claimant was notified by letter on February 7, 1961, that he was charged with violation of Chief Engineer Communication and Signaling's Circular No. 200 account allowing his motor car to be struck by an automobile at Howard Street Crossing, Atlanta, Georgia, about 10:00 A. M., February 2, 1961. Claimant took no exception to this letter. When the employee's representative, at the investigation, raised question as to the rule violation with which Mr. Farthing was charged, it was pointed out that the investigation would be based on charges that Mr. Farthing violated Rule 9 of Circular No. 200. After this was clearly pointed out to the employee's representative no further question was raised during the investigation regarding the charge against Mr. Farthing.

During the investigation Mr. Farthing was asked if he had received notice of the investigation, and he replied in the affirmative, without taking any exception to it.

Claimant knew precisely the purpose of the hearing and that it involved determining his personal responsibility, if any, for the accident. The investigation was conducted in a fair and impartial manner, and it was developed that Mr. Farthing failed to stop at the crossing involved or take necessary precautions to prevent collisions with vehicles or pedestrians.

There was sound basis for the application of the discipline, and the amount affixed in this case was lenient considering the seriousness of the offense, and the fact that this was claimant's second motor car accident within a period of a few months. Therefore, carrier respectfully requests that your Board deny this claim.

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 employees 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.

Claimant was charged with a violation of Circular No. 200 of Carrier's Chief Engineer Communication and Signaling.

He was accorded a hearing and was found guilty of such violation and suspended from service March 6, 1961 through and including April 30, 1961.

It is Claimant's contention that he has been unjustly dealt with under Rule 9 (c) of the current agreement. He further contends that he was not apprised of the precise charge against him, in violation of Rule 9 (b).

We have examined the file and the transcript of hearing, and we have heard the arguments and statements of the parties and their representatives.

Claimant's second contention is that since Circular 200 has 16 Sections, and since he was broadly charged with a violation of Circular 200, Rule 9(b) was violated. He answers this contention by his own responses to questions submitted at the hearing, and we are satisfied that there was no violation of Rule 9(b).

However, we do find that under this record, Claimant was unjustly dealt with, for the evidence adduced failed to show a violation of Circular 200.

It becomes necessary to review that evidence.

Briefly it shows that the Claimant was proceeding North, (Claimant stated South, but the physical facts indicate otherwise), on one of Carrier's motor cars. As he approached the Howard Street crossing at a speed of 4 or 5 miles per hour he noticed an automobile approaching from his right. His motor car was stopped some eight feet into the roadway at which point the collision occurred. Howard Street in the city of Atlanta is twenty-four feet wide, and the crossing is protected by a cross arm sign with no signals or gates. The accident occurred at 10:00 A. M. The weather was clear.

The other vehicle involved in this accident was in the improper lane of traffic on Howard Street.

Circular 200 reads in part as follows:

"Motor Cars must come to a full stop before passing over public crossings protected by automatic signaling devices, as well as any heavily traveled highway or street crossing, and necessary precautions must be taken to prevent collisions with vehicles or pedestrians."
(Emphasis supplied)

It is apparent that the Carrier's Supervisor who conducted the hearing and made the finding was convinced that Claimant was required to make a complete stop here and nothing less. He made no finding that Howard Street was a "heavily traveled highway or street crossing", and in his letter of suspension he quotes paragraph 9 of Circular 200 out of context. He also characterizes Claimant as guilty of "Gross Negligence" which finds no support in this record.

The mere happening of an accident is no proof of negligence. This record does not show negligence on the part of Claimant. The evidence shows that Howard Street is heavily traveled at certain hours, but not at 10:00 A. M., which was the time of this accident. Claimant approached the crossing at a slow speed, he observed conditions there, stopped his car when eight feet into the crossing and was struck, while stopped, by a vehicle traveling on the wrong side of the street.

This record is without evidence to substantiate the finding and justify the suspension imposed.

AWARD

Claim sustained. Suspension ordered to be removed from Claimant's record and that Claimant be compensated for the net wage loss resulting from his suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October 1963.