

The Second Division consisted of the regular members and in addition Referee Ralph W. Yarborough when award was rendered.

Parties to Dispute: (System Federation No. 97, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of Mr. R. C. Shockley when they assessed his personal record fifteen (15) demerits on January 12, 1976.
- (2) That, therefore, said demerits be removed from his 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 waived right of appearance at hearing thereon.

On November 18, 1975 Employee R. C. Shockley, an hourly rated Lineman (electrician), employed by the Atchison, Topeka and Santa Fe Railway Company with headquarters of Barstow, California was one of a team removing a cable from a line of poles near Gallup, New Mexico. Two linemen, McGuire and Claimant Shockley were doing the work with McGuire assigned as driver of the line truck they were using. At the time of the accident in question the Assistant Construction Engineer McCook who was in charge of the three man operation, had gone to Gallup for about 45 minutes on an errand. McCook did not put Shockley in charge of the work in his absence, but Shockley, an electrician, was a co-worker with McGuire, the driver of the truck.

They were working on one side of a railroad bridge across the Rio Puerco River and had removed a cable from a pole, but as they did the next pole in line fell across the bridge. They used thr truck's winch and line

to drag the pole off the bridge. Then Claimant walked across the bridge to see what was to be done on the other side, while McGuire proceeded to drive the truck across the bridge. There was a walkway on the bridge designed for pedestrian traffic and through McGuire's mistakes in driving, the trucks rear wheels got on the walkway, which collapsed. The truck fell into the dry bed of the river. Shockley had not looked back or helped in guiding the truck across the railroad bridge.

Carrier contends that since Rule I provides for safety as first importance in performance of duties, and that employees must use good judgment and courtesy in performing their duties, and under Rule 4 employees are to exercise proper care and treatment of themselves and others, and Rule 16 provides that employees must not be careless of the safety of themselves or others and must remain alert and plan their work to avoid injury, Employee Shockley, Claimant, had violated all of these rules in not assisting and guiding the driver in driving the truck across the railroad bridge.

Admittedly, Mr. McGuire had not complied with the rule as to careful driving.

The Carrier claimed that it was Shockley's duty to give directions to the driver of the truck so that he could keep the wheel properly aligned over near to the rail and off of the pedestrian driveway. Had that been done the truck could have been safely driven across. The dispute is to whether Employee Shockley had the responsibility on the ground to aid and instruct the driver of the truck. The Claimant Shockley agrees that if there are tight quarters or obstacles impairing vision, the man on the ground should direct the driver of the truck. However, Shockley contends that there was ample room for the truck to cross the bridge "if driven properly".

We find that in the temporary absence of Assistant Construction Engineer McCook it was the duty of the two linemen left to cooperate, for each to be diligent and efficient. Had there been such vigilance and cooperation, Claimant would have guided the truck across the bridge, and if he had done so correctly, the vehicle could have been routed so as not to place the heavy tandem axle of one side on the pedestrian walk which was not structurally intended to withstand such weight.

We find that in the absence of the foreman that the two remaining linemen had safety duties devolved upon them that might not have been, had the Assistant Construction Engineer been there in person directing the truck. There was some responsibility on the Claimant, along with the driver, for the accident, and the relatively heavy monetary damage to the truck caused by its crashing down into the dry river bed.

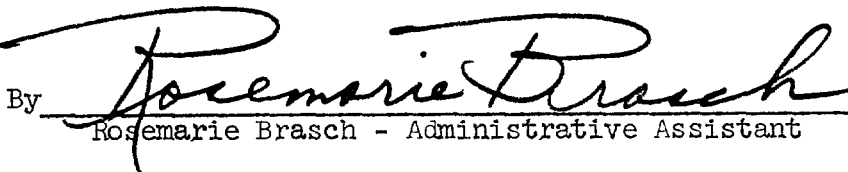
Addressing the discipline assessed, we find that Carrier's Policy which was applied in this case, the Brown System of Demerits, has been approved by this Board in several previous decisions. Under this system, an employee who subsequent to the assessment of demerits has a clear record, has those demerits removed. In this case, there is no evidence indicating that Claimant's record subsequent to this discipline was anything but clear. Consequently, the demerits in dispute here have now been removed, and the entire issue is moot, leaving us without any jurisdictional alternative than to dismiss the claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of August, 1978.