

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
( Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. That the Denver and Rio Grande Western Railroad Company violated the terms of the controlling Agreement when Master Mechanic J. E. Armbrust assessed Carman Martin Schwartz with sixty (60) demerits for being a passenger in company vehicle which was involved in an accident.
2. That Carman M. Schwartz was unjustly assessed demerits.
3. That accordingly, the Carrier be ordered to remove these unwarranted demerits, and Mr. Schwartz be found innocent of all charges.

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 waived right of appearance at hearing thereon.

The Claimant was riding as a passenger in a truck driven by a fellow employe on May 8, 1979, at about 10:30 p.m. It was dark and they were backing over a multiple track crossing when they collided with a moving train. The Claimant admits it was a blind crossing in that there were ~~standing~~ railroad cars blocking their view from either side of the crossing.

It is the Claimant's position that since he was not driving the truck he had no responsibility for the accident and should not have been assessed the resulting 60 demerits. The Carrier maintains that the driver of the truck could not drive and check the crossing too. The Carrier further asserts that the Claimant should have gone behind the truck to protect the blind back up movement of the truck over the crossing. Carrier cites its Safety Rule M, which states:

"Employees must exercise care to avoid injury to themselves or others by observing the condition of equipment and the tools which they use in performing their duties, and when found defective will, if practicable, put them in safe condition, reporting defects to the proper authority.

They must inform themselves as to the location of structures or obstructions where clearances are close.

They must expect the movement of trains, locomotives, cars or other equipment at any time, on any track, in either direction.

Every precaution must be taken to prevent injury to employes, and they are prohibited from doing any work in a manner that might jeopardize their safety."

The Claimant admitted during the investigation that he was familiar with this and other safety rules and maintains that he complied with all of them. The Board disagrees. Common logic suggests that he should have gotten out of the truck, checked the crossing, and directed the driver safely across. Such action is also implicitly called for in the last paragraph of Safety Rule M above and is a common practice in the railroad industry as well.

Finally, the record in this case demonstrates that the investigation conducted prior to the imposition of discipline was fair, reasonable, and in accordance with the controlling Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.