

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the
(United States and Canada
(
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement the Soo Line Railroad Company violated Rules 32 of the Shops Craft Agreement as amended and Soo Line General Safety Rule (f), when carman Glenn Martin, Shoreham Shops Minneapolis, MN., was unjustly suspended from service, for three days on February 17, 18, and 19, 1983, due to investigation held on February 10, 1983, to determine facts and place responsibility in regard to damage which occurred to company vehicle GT7862, during his tour of duty on February 1, 1983.

2. That accordingly, the Soo Line R.R. Co. be ordered to compensate Carman Martin, for loss of compensation of pay, for three (3) eight (8) hour days straight time carmen's rate, for being unjustly removed from service and that investigation be removed from his personal file, for Soo Line RR Company violation of Rule 32, Soo Line General Safety Rule (f) and failure to show burden of proof of charges, that carman Martin was fully responsible for damage done to Soo Line vehicle.

3. In addition to above 3 named dates of lost compensated pay, Carman Martin is claiming eight (8) hours Holiday pay for February 22, 1983, which was denied him, due to Mr. Nelson, assessing one of the days of discipline on his last work day before the Holiday.

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 employes 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, Glenn Martin, was suspended from service for three days due to an investigation held on February 10, 1983. The Claimant is a Carman at the Carrier's Shoreham Shops.

On February 1, 1983, the Claimant was driving Company vehicle GT 7862 at approximately 1:00 P.M. on Carrier property. He lost control of the vehicle due to icy conditions and collided with a truck, causing approximately \$1,260.00 worth of damage to the Company vehicle.

The Organization argued that the Claimant was not proven to be careless by the Carrier. The approximate cause of the accident was the icy conditions of the road. The Organization cited three other accidents, which were classified as unavoidable and the individuals involved in those accidents were not disciplined by the Carrier in any way. It was also stated the Carrier could have made the intersection safe as is required by General Safety Rule F. The Organization further argued a procedural point in that the Carrier did not furnish a complete copy of the transcript to the Organization. Missing was Exhibit B, which was the damage estimate to the Company vehicle.

The Carrier argues that the major fact of this case is that the Claimant should have had control over his vehicle and he did not. With respect to the other accidents cited by the Organization, they are much different than this case. One was caused by equipment failure, the second was caused by a deer unexpectedly entering the roadway, and the third was caused by the other vehicle. With respect to the procedural claim, the Carrier argued that Exhibit B was not at all necessary for the Organization to press their claim. The Carrier also noted that the amount of damage is not a question, but the carelessness of the Claimant in operating a Company vehicle.

Upon complete review of the evidence presented, the Board finds no procedural defect in this case as Exhibit B is not crucial to the presentation of the Organization's case and, in fact, when it was requested, the Carrier did provide it. During the investigation, the Claimant stated that he was operating the vehicle at approximately ten to fifteen miles per hour and that he started braking before reaching the intersection prior to seeing the other vehicle that was involved in the collision. The Board finds this testimony to be unpersuasive. Employees when operating Company vehicles are required to exercise due care and the Board finds in this case the Claimant did not live up to that standard and given the evidence presented, we can find nothing in the record that would lead us to substitute our judgment for the judgment of the Carrier in this case. We will therefore deny the claim. Because of the claim denial, the question of Holiday Pay becomes moot and therefore the Board will not address that part of the claim.

A W A R D

Claim denied.

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Award No. 10509
Docket No. 10648
2-SOO-CM-'85

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August, 1985.