

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(St. Louis Southwestern Railway Company)

Dispute: Claim of Employees:

1. That the St. Louis Southwestern Railway Company erred and erroneously dismissed Electrician G. A. Wiggins from service at the end of his regular tour of duty on October 15, 1984.

2. That accordingly, the St. Louis Southwestern Railway Company be ordered to compensate Electrician G. A. Wiggins eight (8) hours each day, five (5) days per week at the pro rata rate of pay commencing with October 16, 1984 and continuous until such time as he is restored to service with his seniority rights unimpaired and paid for all fringe benefits as though he had remained in the service of the Carrier.

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.

Claimant was employed as an Electrician by the Carrier at its Pine Bluff Diesel Shops, and was assigned to the night shift (11:00 P.M. to 7:00 A.M.) on August 19, 1984. On August 20, 1984, at approximately 5:30 A.M., Claimant drove a Carrier-owned vehicle into a large hole located in a drainage ditch adjacent to a 2 1/2 lane designated gravel roadway. As a result of the incident, Claimant and two fellow employees riding in the vehicle sustained injuries.

The Carrier charged Claimant with violation of Rules 801, 4218, and 4219 which provide in pertinent part:

"Rule 801 - Employees will not be retained in the service who are careless of the safety of themselves or others...

Rule 4218 - Operate vehicles only in designated areas and over designated crossings, pathways and roadways.

Rule 4219 - Vehicles must be operated in a manner consistent with existing conditions."

As a result of an Investigation conducted on October 2, 1984, Claimant was found to be in violation of said Rules, and in conjunction with the Claimant's past record, the Carrier dismissed Claimant from its service.

The record of the Investigation shows that the Claimant testified to the fact that although he was unaware of the presence of the hole, he was warned to stop prior to the accident by a fellow employee who was a passenger in the vehicle. Claimant testified that approximately two seconds elapsed between the time of the warning by the fellow employee and the accident. Claimant testified that he was "...mentally and physically exhausted and ... just wasn't thinking" as the reason he did not stop the vehicle prior to the accident. The evidence also shows that the fellow employee attempted to steer the vehicle away from the hole subsequent to his warning to the Claimant, but prior to the accident. The attempt on the part of the fellow employee was unsuccessful. The testimony of the Claimant was substantially corroborated by that of the fellow employee who was a passenger in the vehicle at the time of the accident. In addition, the record shows that the hole into which the vehicle plunged was located in a drainage ditch approximately six to nine feet from the edge of the two and one-half lane designated roadway.

The Organization contends that the failure of the Claimant to take evasive action, after the warning of his fellow employee, was not the sole contributing factor which caused the accident. The Organization contends that the failure of the Carrier to mark or guard the hole and the failure of the headlights on the truck immediately prior to the accident are contributing factors which the Carrier failed to take in account when making its finding.

This Board has carefully reviewed the record and finds that there is substantial evidence in the record which supports the Carrier's finding that negligent acts of the Claimant in operating the Carrier's vehicle off of the designated roadway and in a fashion inconsistent with existing conditions resulted in the accident which caused personal injuries to the Claimant and two fellow employees who were passengers in the vehicle at the time of the accident. Accordingly, this Board will not disturb the finding of the trier of fact with regard to the violations of the Carrier's Rules.

With regard to the discipline imposed by the Carrier, i.e. discharge, the Carrier based its evaluation on the severity of the current violations and the Claimant's past record. The Claimant's past record relied upon, in part, by the Carrier in determining the measure of discipline involves a 30 day suspension in March, 1981, and a 90 day suspension in January, 1982, both for Rules violations. The Organization contends that the Carrier was precluded from considering these items, because of language contained in Agreements signed by the Carrier and the Organization in resolution of the two disputes.

Specifically, the language contained in these two Agreements provide, in pertinent part, "...will not be referred to (in the handling) any (other) future cases." This Board agrees with the Organization with respect to this issue. The language of the Agreements is clear on its face and applies to all cases including the instant case. Accordingly, the Board finds that the Carrier is estopped from considering these two incidents in determining the measure of discipline to be assessed against the Claimant.

However, this Board is of the opinion that in cases such as the instant case where the careless and negligent acts of the Claimant are the proximate cause of personal injuries, and hospitalization to the Claimant and two fellow employee, discharge for violation of the Carrier's pertinent Rules is not an arbitrary, unreasonable, nor capricious measure of discipline. The Board will not disturb the Carrier's decision in this instance.

For the reasons cited herein, the Board denies this Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 29th day of April 1987.