

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13396

Docket No. 13317

99-2-98-2-1

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(Sheet Metal Workers' International Association
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "1. The Carrier violated the provisions of the Current and Controlling Agreement, and in particular Rule No. 6 Discipline, of said Agreement, when they improperly assessed discipline consisting of a written Letter of Reprimand to Sheet Metal Worker K.A. Schroeder, following an investigation that was held on February 14, 1997.
2. That, accordingly, the Carrier remove the discipline issued, a written letter of Reprimand from the personal record of Sheet Metal Worker K.A. Schroeder."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, while driving a company vehicle, got caught up in a road-rage situation and was assaulted, receiving several cuts above and below his eye. As a result of this incident, Claimant lost time from his work.

The Carrier, after investigating the incident, charged Claimant and held an Investigation, following which he was assessed a record mark.

A review of the transcript convinces this Board that Claimant may have triggered the event by blocking the other motorist's efforts to pass him on the right side using the shoulder of the road. This action caused the assailant to become enraged and he got out of his car and approached Claimant, cursing and threatening. Claimant testified at the Investigation that he had "enough" and proceeded to exit the vehicle only to be struck in the eye by the assailant who then fled the scene.

After reviewing the transcript and the on-property handling, the Board is of the view that Claimant erred in judgement on two counts. If the assailant was attempting to pass on the right using the shoulder, Claimant should not have blocked his passing. The assailant's intent was a traffic violation best left to the traffic police even though such action is viewed disdainfully by other law-abiding motorists stalled in traffic.

Secondly and most importantly, when the assailant left his vehicle ranting and raving, there was no need for Claimant to exit the company vehicle other than to confront the assailant, nose to nose, or more appropriately, nose to chest, as the assailant was described as 5'7", weighing 160 lbs., whereas Claimant is 6'3", weighing 180 lbs. Claimant could have, and should have, stayed in the vehicle with windows up and the doors locked and that would have supported his testimony that he was scared.

One purpose of imposing discipline is to correct some wayward conduct of the employee. Claimant, with cuts above and below the eye, plus loss of time because of the assault, is not likely to forget the incident. He undoubtedly understands when the media talks about road rage. This incident will be with Claimant for some time.

Regarding the discipline of a record mark reflecting "conduct unbecoming," the Board believes that the record mark should be removed from his file as Claimant's record of 21 years of service involves some disciplinary action for an absentee problem, but nothing indicating Claimant is a violent individual. If Claimant has lost any time

because of this Investigation, he is not to recover any lost pay. He can consider time lost in this instance as time lost due to his own volition.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 12th day of April 1999.