

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13511

Docket No. 13417

00-2-99-2-10

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

**(Brotherhood of Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13 when they arbitrarily suspended William M. Dostie from service as a result of an investigation held on February 12, 1998.
2. That, accordingly, the Springfield Terminal Railway company be ordered to compensate Carman William M. Dostie in the amount of eight (8) hours pay for work days he was withheld from service commencing March 16, 1998 through and including March 20, 1998.”

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 was employed on date of grievance as a Carman, assigned to the Waterville Car Shop, Waterville, Maine. His Claim challenges the fairness of a five-day disciplinary suspension imposed as a result of a collision involving the truck he drove while on duty and another of Carrier's vehicles.

The essential facts are not in dispute. On January 22, 1998, while driving Carrier's pick-up truck No. 3220 near Waterville en route to perform Carman duties, Claimant crossed over a track known as the "Yankee" track. He observed Engine No. 71 partially blocking the crossing at that point, extending approximately four feet into the 30-foot wide roadway, and noted that Company vehicle No. 3520 was parked behind and parallel with that locomotive. He proceeded around the locomotive and toward nearby track 21, where he intended to cross over that track, park and work on the 805 spreader stowed on the Yankee track. As he did so, he suddenly noticed another locomotive in motion approaching the track 21 crossing. He immediately applied his brakes but skidded slightly, moving about four feet into the foul of track 21. As switcher engine No. 71 drew to a distance of one and one-half car lengths—75 feet—from his position, Claimant threw his truck into reverse gear and backed up some ten feet before his rear view mirror "filled with sun." Not yet fully clear of the track, he backed up further, proceeding approximately another 46 feet and colliding with truck No. 3520. Damages to the two vehicles were estimated at \$1400.

From the Organization's perspective, the penalty assessed is disproportionate to the offense. A major ice storm had deposited five inches of ice over the area some days earlier, leaving roads in an extremely slippery state. It is not unreasonable, the Organization argues, to believe that even driving with extreme caution at only five miles per hour, as Claimant was, it would be difficult to stop an 18-foot long, 20,000-pound vehicle in such conditions. Those circumstances, taken with the glare of the sun and claimant's long and unblemished service, are mitigating factors deserving of attention. A cautionary memo might be appropriate, but not a five day suspension.

Based upon its review of the record evidence, the Board concludes that the discipline imposed by Carrier was neither unwarranted nor immoderate. In this instance, while it is clear that Claimant skidded a few feet upon initially braking after seeing Engine 71 coming in his direction, there is no evidence in this record that slippery roads played any causative part in the accident at issue. The street on which the

collision occurred was either flat or ran at a slight incline; it was 22 feet wide and in use by numerous other vehicles. No icy or unsafe conditions had been reported that day in the area. Both the roadway and surrounding areas had been sanded. The inside distance between the Yankee track and track 21 was 75 feet from rail to rail—and 85 feet from Claimant's position--giving him ample room to back up and avoid striking vehicle No. 3520, just as he had done in driving around it a few minutes earlier while moving forward.

Given the conditions depicted in this record, not contradicted by Claimant, and without the benefit of any other plausible explanation for this accident, the Board concurs with Carrier's assessment that, notwithstanding his long and conscientious service, better options were available to him than backing up at least 46 feet while blinded by the sun—including either clearing the track by driving forward or getting out of his truck to see what if anything was in his path.

The Organization's procedural arguments have been considered and rejected as without merit. For the reasons stated, above, this Board finds that the charges specified in the Notice of Investigation were amply proved, and we must respectfully deny the Claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 17th day of April, 2000.