

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13517
Docket No. 13406
00-2-98-2-95**

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 13.1 when they arbitrarily suspended James M. Greene from service as a result of an investigation held on January 22, 1998.**

- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman James M. Greene in the amount of eight (8) hours for each work day he was withheld from service commencing February 26, 1998 through and including February 27, 1998. Also, any other compensation lost as a result of this investigation.”**

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.

The Claimant was a 25-year Carman at the time this dispute arose. On December 10, 1997, he traveled by truck to Worcester Yard with fellow Carman Barnes to inspect train TV 96 at that location. Barnes parked the vehicle in close proximity to trackage on which a ballast regulator was being operated by an employee of Conrail, which owns and operates the yard. After completing their assignment some two hours later, both men returned to their truck. Seeing no one in the Conrail equipment, the Claimant opened the passenger-side door, placed his equipment inside and started to get into the truck. The ballast regulator then began to move, and an open metal door on the rear end of that unit struck and damaged the door of the Claimant's road truck. The time elapsed from opening the truck door until the collision was estimated at approximately 30 seconds.

The record demonstrates that the Carrier notified the Conrail Supervisor in charge, explained the situation and suggested that Conrail take appropriate disciplinary against the operator of the ballast regulator. For its part, following Investigation and Hearing it assessed a two-day, disciplinary suspension against the Claimant and Carman Barnes.

The Organization's appeal contends that the Carrier's action was unjust under the circumstances. It asserts that the real problem here was that two different railroads were involved, and there was inadequate communication between them. It was the Conrail employee who moved his equipment in an unsafe manner, and that person, it maintains, received no discipline.

The Board has reviewed the evidence and finds that although Conrail's employee can be faulted for his role in carelessly operating his equipment, the Claimant also failed to take the necessary precautions to avoid this accident as charged. While no one could seriously fault the Organization's position that just because an accident occurs does not mean that someone was negligent, in this instance the evidence establishes the Claimant's neglect of important Safety Rules. The Hearing transcript makes it clear that the Claimant did not use due care in opening his truck door as a noisy, 40 foot long piece of equipment was moving in his direction with his truck parked dangerously close

to the track. The Claimant does not dispute that the Conrail equipment was running as he started to enter his truck, and, without looking at that equipment on the adjacent track, simply assumed that since the truck door cleared the regulator, his actions posed no danger. The facts bespeak a lack of alertness.

Having determined that there is sufficient record evidence to support the Carrier's finding of negligence, we next examine the discipline imposed. Mindful of the well-established norms in the industry, this Board will not set aside the Carrier's imposition of discipline except upon finding it to be unreasonable, arbitrary or capricious. In this case, the Claimant received a two-day suspension for inattention that may have resulted in much more serious consequences than a damaged truck. The Board finds the action taken by the Carrier to be reasonable and respectfully denies 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 15th day of May, 2000.