

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13518

Docket No. 13407

00-2-98-2-96

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 Ralph K. Barnes 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 Ralph K. Barnes in the amount of eight (8) hours for each work day he was withheld from service commencing February 12, 1998 through and including February 13, 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.

After driving with fellow Carman James Greene to Worcester Yard on December 10, 1997 to inspect train TV 96 at that location, the Claimant parked the Company's truck in close proximity to a track on which a ballast regulator owned by Conrail had been sitting. The two men performed their inspection in approximately two hours and returned to their truck, intending to depart. As Green opened the door on the passenger side of the truck and put his equipment inside, the ballast regulator began to move, causing the extension door on that unit to collide with and damage the open door of the Carrier's truck.

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. Following Investigation and Hearing, it then assessed a two-day, disciplinary suspension against the Claimant and co-worker Greene.

The Organization asserts that the evidence in this matter reveals no negligence on the Claimant's part contributing to this mishap. The Board agrees with that assessment. After careful review of the record, we conclude that while the Carrier's charges against Greene and its recommendation to Conrail to investigate the actions of its employee made abundant sense, a Rule violation insofar as the Claimant is concerned would depend entirely upon a finding that he had improperly parked his truck too close to the track on which Conrail's equipment was operating.

The record does not support such a finding. The evidence indicates that Barnes properly parked the Carrier's truck. The Carrier witness Melvin, sent to Worcester to do a safety review following this accident, testified as follows in response to the question of whether the Carrier's truck was parked in the clear: "I'm sure if the truck was fouling, I probably would have made note of it and mentioned it to them."

Having determined that there is insufficient record evidence to support the Carrier's finding of negligence, the Board sustains the claim.

AWARD

Claim sustained.

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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 15th day of May, 2000.