Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13891
Docket No. 13773
06-2-05-2-25

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

(Brotherhood of Railway Carmen Division of the
(Transportation Communications International
(Union, AFL-CIO
PARTIES TO DISPUTE: (
(The Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13 when they improperly assessed discipline to Carman Richard F. Thomas as a result of an investigation held on July 28, 2004.

2. That accordingly the Springfield Terminal Railway Company be required to remove the Formal Reprimand from the record and file of Carman Richard F. Thomas."

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, R. F. Thomas, was issued a citation and reprimand based on an investigation held on July 22, 2004.

The Organization argued that the Carrier violated Rule 13.1 of the current Agreement and that the Carrier failed to provide a necessary witness in the investigation. That witness would have testified that there were faulty brakes on this track mover. The Hearing Officer decided to let the record speak for itself. The Carrier was aware that the brakes on this piece of equipment could have been faulty. Therefore, this claim should be sustained not only on the procedural aspect but also on the merits. The Organization further objected more than five times and the Hearing Officer did not rule on any one of them. The Carrier had been advised that this equipment was not fit for service. It is not fair to lay the blame on the Claimant rather than the Carrier itself. Therefore, the claim should be sustained.

The Carrier argued that the Claimant was involved in a situation where he moved cars into a building, one of which would not clear the opening. The Claimant stated that he was not aware that this car was too high. The Organization's sole argument was that the brakes on the car mover were not in mint condition. Even if this were true, the Carman could have stopped the car in question before it hit the building. The Claimant was responsible for causing the car to be moving in the wrong place by not noticing it was a high car. The record shows that the Claimant did not exercise due care, therefore, he was liable for this situation. No matter what the Organization's arguments were, they do not expunge the Claimant's primary area of responsibility that of overlooking an oversized car.

Upon complete review of the evidence, the Board finds that the Claimant engaged in a lack of proper judgement on the date in question. The procedural errors cited by the Organization, while considered by the Board, were not serious enough to show convincingly that the Claimant did not receive a fair hearing. The Claimant was disciplined because of a lack of judgement which was clearly shown in the record of this case. The Board notes that the Claimant only received a reprimand which was certainly appropriate given the circumstances. The Board notes that there were thousands of dollars worth of damage that occurred which primarily resulted from the Claimant not being properly observant. Therefore, the Board finds that the discipline given was appropriate, and the claim shall be denied.

Claim denied in accordance with the Findings.

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 25th day of April 2006.