

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Laura B. Spruill, Trucker, South Philadelphia Freight Station, Philadelphia, Pennsylvania, Philadelphia Terminal Division, be returned to service with all rights unimpaired and compensated for all wage loss sustained dating from February 6, 1948, until adjusted. (Docket E-561)

OPINION OF BOARD: Claimant Laura B. Spruill was a regularly assigned trucker at the South Philadelphia Freight Station, Philadelphia, Pennsylvania, on January 7, 1948. On that date, she sustained an injury while working with three other employees while using a flat truck in moving some welded rod from the platform into a trailer truck. An iron plate was used between the platform and the floor of the trailer truck. Claimant was in front steering the flat truck with its load of 2100 pounds of welded rod and Truckers Taylor and Harris were pushing the load from the rear. In crossing the iron plate into the trailer truck, the front of the flat truck tilted. Another employee bore down on the high side and the loaded truck moved down the plate at unexpected speed. As a result claimant was pinned between the loaded flat truck and the side of the trailer truck causing her to be injured. After a hearing, she was dismissed from the service on February 6, 1948.

Claimant was charged with "carelessness in performance of duty on January 7, 1948." The record shows that the truck had been used in moving 1400 pounds of welding rod (40 cases) just previous to the accident. On the second trip 2100 pounds (60 cases) were loaded. This was due to the fact that 40 cases were to be loaded in the front of the tractor truck and 60 cases in the rear. On the first trip the flat truck moved slowly down the plate into the trailer truck. On the second trip, two additional truckers were used in handling the load. The latter two employees were pushing at the rear of the truck and the evidence shows that this caused the excess speed of the truck. This evidence does not show that the proximate cause of the accident was a want of due care on the part of the claimant. In fact, the evidence indicates that other employees negligently contributed to the accident. The position of the Carrier seems to be that under the conditions existing the claimant should have anticipated the excess speed of the flat truck and the amount of force that other employees might have exerted which contributed to claimant's injury. While we can agree with Carrier's contention that claimant should have observed the conditions existing, we cannot agree that she was obliged to anticipate negligent or unexpected conduct on the part of other employees.

The other employes were not called as witnesses. Claimant's version stands undisputed. Under the statement of facts, Carrier did not make a case against claimant that warranted the exercise of discipline.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1951.