

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Florida East Coast Railway Company:

That C. G. O'Neil, who was dismissed September 12, 1960, for his alleged responsibility in connection with a motor car — highway vehicle collision on August 31, 1960, be reinstated to his former position of Signal Maintainer at New Smyrna Beach, Florida, with full seniority, and all other rights unimpaired. [Carrier's file: 2-26]

OPINION OF BOARD: This is a discipline case. The Claimant was in charge of Motor Car S-167 at the time it struck an automobile at Indian River Boulevard Crossing, Edgewater, Florida, on August 31, 1960. On September 2, 1960, he was notified to report to the Office of Superintendent of Communications and Signals, St. Augustine, Florida, at 10:00 A.M., Thursday, September 8, 1960, for formal investigation to develop the facts and place responsibility for the motor car in his charge striking and damaging the automobile. In the notice of September 2, 1960, he was advised of the rules and instructions involved.

Investigation was conducted on September 8, 1960, as scheduled, at which the Claimant was present and represented by the General Chairman of the Organization. On September 12, 1960, the Claimant was notified of his dismissal from the service, following which request was made for his reinstatement.

The evidence adduced at the investigation, in the opinion of the Board, clearly established that the Claimant was negligent and disregarded the rules of the Company in the operation of his motor car on the date involved. The Claimant stated that he was about 300 feet from the crossing when he first saw the automobile, but did not apply the brakes of the motor car until within about 30 feet of the crossing. While the Claimant stated that the rails were slippery from oil or grease, he further stated that he had known that such condition had existed for at least a year and a half prior to the time of the accident. Knowing of the alleged slippery condition of the rails, he

displayed negligence by waiting until within thirty feet of the road crossing before applying the brakes of the motor car.

The fact that the automobile failed to stop before entering the crossing did not excuse the Claimant from complying with the rules of the Company as to the operation of motor cars.

The record also reveals that there were three prior occasions on which the Claimant failed to operate motor car in accordance with the rules.

Based upon the entire record, the action of the Carrier in dismissing Claimant from the service was not arbitrary, capricious or in bad faith. The claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1962.