

Award No. 13704
Docket No. SG-13553

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) The Carrier assessed excessive or improper discipline against Signal Helper Arthur Burdine for his alleged responsibility in a motor car accident at Verona, Kentucky, on January 13, 1961.

(b) The Carrier now be required to reduce or eliminate the discipline recorded against Claimant Burdine. [Carrier's File No.: STD 91960 G-307-2]

OPINION OF BOARD: Claimant Burdine was regularly assigned Signal Helper on January 13, 1961 and was assigned to assist Signal Maintainer Alexander. On that date, both men were riding a track motor car through a passing track near Verona, Kentucky, when the motor car derailed injuring both occupants. Claimant Burdine was the operator of the motor car.

An investigation was held at Latonia, Kentucky on February 3, 1961 which revealed the derailment was caused by the motor car passing over screenings that had been placed on the track by unknown parties. The derailment occurred in the daylight hours. Both men were found to be equally and jointly responsible by not maintaining a proper lookout as required by the rules. Both received, as discipline, a book suspension of 45-days. Neither man lost time because of the discipline.

In the submission, both parties recite many issues than those advanced upon the property. The Board is concerned only with the question:

Are the days recorded against the Claimant's record unfair to him in light of his service to the Railroad over the years and was the Claimant's responsibility in the accident not equal to Mr. Alexander's who was the Maintainer?

The Board notes that at the time of the investigation on the property, both men confirmed, through questioning, that they had been examined on the rules of the Maintenance of Way Department and the C.T.C. Operating Rules.

Both were familiar and aware of their individual responsibilities to operate motor cars within the safety rules. These safety rules, governing operation of motor cars, applied to all operators alike, regardless of their positions and regardless who might be accompanying the operator.

It is not denied by the Organization and it is clearly supported by the record, that the Claimant was a fully qualified motor car operator on the date in question.

We find that the Claimant's responsibility, as established by the investigation conducted on the property, equal to that of Signal Maintainer Alexander. As the operator of the motor car, Claimant was equally and jointly responsible for the accident. Safety rules impose a stringent rule of conduct and a high degree of care upon a operator of a motor car. Neither does the Board find justification for canceling the 45-day book suspension on a leniency basis, as it being unfair to Claimant, in light of many years service. Years of service do not give an employe a license to violate established rules for personal safety, or the safety of others.

The Record is clear. The discipline, which did not result in any monetary loss to the Claimant, was not arbitrary or capricious. The Carrier's judgement should not be set aside.

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 (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1965.