

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20430

Docket Number CL-20476

David P. **Twomey**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and **Steam-**
(ship Clerks, Freight Handlers, Express
(and Station **Employees**
(
(Norfolk and Western Railway Company
((Lake Region)

STATEMENT OF CLAIM: Claim of System Board of Adjustment No. 218
(GL-7479) on the Lake Region, Norfolk and Western Railway Company, that:

1. Carrier violated the Agreement between the parties when on May 18, 1973, they arbitrarily and capriciously assessed Clerk H. J. Gramling fifteen (15) days actual suspension.

2. The Carrier's action was unjust, unreasonable and an abuse of Carrier's discretion.

3. Carrier shall compensate H. J. Gramling for each day held out of service, with seniority and all other rights unimpaired.

OPINION OF BOARD: Claimant was charged with operating a Carrier vehicle (leased) in a careless and reckless manner which resulted in the vehicle striking a freight car at a crossing, causing damage in excess of \$1,000 to the vehicle.

On May 4, 1973 Claimant was given notice of investigation. The investigation took place on May 9, 1973. On May 18, 1973 the Claimant was notified by the Carrier that he was assessed 15 days actual suspension.

Claimant contends that the collision was a pure and simple unavoidable accident, one of those unforeseen events that occur without anyone's fault or negligence. We disagree.

Claimant admits to driving at a speed of thirty miles per hour, give or take a few miles, in a car that was in proper operating condition, on a straight, level, dry blacktop road, in clear weather at **dawn**. He was very familiar with the area. He passed a railroad crossing warning sign at 30 m.p.h. without attempting to slow down and in fact did not apply his breaks until he was **10** feet from the crossing on which the train was passing,

It is clear that the Claimant failed to heed the railroad **signs** and failed to observe the cars on the crossing until it was too late to stop. It is clear that the Claimant operated the vehicle in a careless manner.

A fifteen day suspension for such careless conduct which resulted in damage to a Carrier vehicle cannot be considered arbitrary or unreasonable.

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 Employees involved in this dispute are respectively Carrier and Employees 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 claim should be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauline
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.