

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21318  
Docket Number MW-21223

Frederick R. Blackwell, Referee

**(Brotherhood of Maintenance of Way Employees**

PARTIES TO DISPUTE: (  
(Burlington Northern Inc.

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

(1) The suspension of five (5) days imposed upon Track Inspector W. A. **Heckman** for alleged "violation of Rules 63 and 81" was **improper**, unwarranted and in violation of the Agreement (System File P-P-197C/MW-20 8/6/74).

(2) **The** claimant's record be cleared and he be compensated for all wage loss suffered, all in **accordance with** Rule 40(G).

OPINION OF BOARD: The Claimant, a regularly assigned track inspector, was operating a motor car on January 29, 1974 when it collided with an automobile at a public highway crossing at Myrtle Street, **Hoquiam**, Washington. Charges were lodged against the Claimant regarding his responsibility for the collision, and a hearing on the charges **was** held on February 8, 1974. **Following** hearing, the Carrier suspended **the** Claimant for five (5) days on findings that his actions in the collision constituted violations of Rules 63. and 81 of the Rules of the Maintenance of Way Department.

The Organization appeals the suspension on the procedural ground that the notice of charges did not contain enough specificity and that the evidence of record does not support the **findings of** violations of Rules 63 and 81.

The statement of **the** charge contained sufficient specificity to meet due **process** standards and thus the **record** reflects no procedural defects. **With** regard to the merits, the facts of record establish that on the date of the collision, the Claimant stopped at the **crossing in weather** conditions which afforded good visibility, in the direction from which the automobile involved in the collision was operating. The Claimant stopped the motor car clear of the crossing; he looked and did not see an auto approaching the crossing. He then proceeded to operate the motor car **across** the highway **crossing**, but his motor car was **struck** by **an automobile before** he completed the movement. These facts and the whole record provide substantial evidence to support the finding of violation of Rule 63, which relates to the precautionary measures to be taken in operating equipment such as Motor Cars over a public **crossing** that is not protected by gates

or a watchman. However, **Rule 81** is a speed rule requiring that on-track equipment shall be operated at a "safe speed" in all the circumstances, grade, load, rail and weather conditions, and the record does not contain evidence to **support a** violation of this rule. The record establishes that the Claimant approached the highway crossing prepared **to stop** and that he did stop. Thereafter, the Claimant and the driver of the car operated their vehicles into the same space at the same time, but this fact creates no inference that the speed of the motor car was too fast or too slow for the movement in question. And since no testimony of an eye witness relates to the motor car's speed, it must be concluded that the Carrier's finding of guilt in respect to Rule 81 is not supported by substantial evidence of record and consequently such finding is arbitrary.

From the foregoing conclusions, it is concluded that the five (5) day suspension is **excessive in** light of the offense proved of record; accordingly, the suspension is reduced to three (3) days and the Claimant is to be compensated for two days' lost wages.

**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 violated in accordance with the Opinion,

A W A R D

Claim sustained to the extent that the discipline is reduced as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A.W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1976

