

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21705
Docket Number MU-21660

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(
(Southern Pacific Transportation Company
(Pacific Lines)

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

(1) Because of the injury sustained on September 20, **1974**, the Carrier should pay to Mr. M. C. **Magnussen** the benefits set forth in Article V (b) **(3)** of the February 10, **1971 Mediation** Agreement (Carrier File **C-7822-HBH**).

OPINION OF BOARD: **Claimant** in **this** dispute was injured when the truck he was **driving, transporting** rail, overturned on September **20, 1975**. The issue in this dispute is whether **Claimant** is entitled to benefits provided by Article V, Paragraph (b), Sub-paragraphs (2) and **(3)** of the Off Track Vehicle Agreement. Carrier takes the position that Article **V** was never intended to include an **employee** whose assigned duty was to drive a truck.

The identical issue as that herein was presented to this Board in **Award 20693** and subsequently in Awards **21567, 21613 and 21125**. No evidence or argument has been presented in this dispute to persuade us that those **awards are all palpably erroneous**. Therefore, it is our conclusion that **Claimant** herein did come under the coverage of Article V even though his full time duty was to drive a truck and the accident occurred while he was engaged in that **occupation**. We include the reasoning set forth in our Awards **20693 and 21567** in this decision by reference **and** consider the matter to **be** resolved on the principle of stare decisis: no good cause has been shown to overturn the established precedents.

Carrier raises the question of offsets and subrogation in its presentation. It is understood that **any** payment **Claimant** receives as a result of a **damage** suit would be subject to Article V, **(3)** and **(f)**. Further, under paragraph (b) **(3)** Carrier shall receive credit for any payments made as **advances** to **Claimant** and also as a result of any **amounts Claimant has** received under the **Railroad Unemployment Insurance Act**. It is concluded, therefore, that the Claim must be sustained, but that Carrier has a right to offsets and subrogation under Article V.

FINDINGS: **The** Third Division of the Adjustment Board, upon the whole record end **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 end **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 **Agreement** was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th **day** of September 1977.

