

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23910
Docket Number MW-23822

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Terminal Railroad Association of St. Louis

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

(1) The discipline assessed Foreman J. L. Pigg for his alleged 'responsibility for the damage incurred to Truck 296' was without just and sufficient cause and on the basis of unproven charges.

(2) Foreman J. L. Pigg's record shall be cleared of the charge leveled against him."

OPINION OF BOARD: The Claimant was assessed ten days' suspension without pay, which assessment was suspended placing the Claimant on probation for six months. This sentence was awarded at the hearing which established that the Claimant was at the wheel of a truck backing up a hill when the rear axle broke.

The Claimant was track foreman of a gang dispatched to repair track. When the task was completed, the driver of the truck which was subsequently damaged, was instructed by the Claimant that rather than backing up to the service road utilized in arriving at the location, he should drive down to the road leading ultimately out of the area. When they arrived at the lower road, it was found to be cut off and it was necessary to back up to the initial area and turn in to the service road. The driver was unable to back the truck up as it kept stalling. The Claimant then attempted to back the truck up and in the process, the axle broke.

After hearing, the Carrier found the Claimant responsible for the damage and imposed the penalty referred to above.

There is no question but that the damage to the vehicle occurred while the Claimant was driving the truck. There is also no question but that the truck was damaged while it was being backed out of an area where the events show it should not have entered.

The issue then before this Board is to determine not only that the damage was caused by the Claimant, but whether it was caused through negligence of the Claimant for which he should be held responsible.

It was obvious in hindsight that it wasn't very clever to move down into the area where he instructed the driver to go. Who is to say, however, that it was poor judgment when to travel this route the truck would be going downhill to the road rather than being backed up to another road? We have great difficulty in determining that the Claimant used poor judgment at the

time that he **made** the decision to instruct the driver to proceed forward even though it may show **upon** reflection that it **was** not a wise thing to do.

We have **examined** the record thoroughly **and**, in particular, the **transcript** of the hearing **and cannot** find **any** basis for a **showing** that the **Claimant** acted negligently **in** this matter. We are usually reluctant to **overturn** a **decision where** there **issome** factual basis which, if believed by the Carrier, would support the punishment imposed. **However**, in this instance there appears to be **no** factual basis to hold that the Claimant was negligent **in his** action. We do **not** believe that the concept of poor **judgment** can be relied **upon in** this **instance** given the **circumstances** including the location **and** the **time** of day that the incident occurred. To hold otherwise would, in this case, **make** the Claimant the absolute guarantor that nothing material would happen to the **equipment** in his charge. **Poor judgment in this instance is not the equivalent** of negligence.

It is noted that the **punishment** was **minimal**. It served the purpose of informing the **Claimant** that the Carrier took the **matter** seriously noting that he and others similarly situated **should be** very careful with the **equipment** of the Carrier; however, that point having been made, we do not believe that it is necessary to keep the **punishment** on the record of the Claimant and we, therefore, will grant the claim.

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 **Agreement** was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of June 1982.

