

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24303
Docket Number SG-24443

Robert Silagi, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern:

Claim No. 1. General Chairman file: E-81-237, Carrier file: SI-81-316B

On behalf of Assistant Signalman C. G. Edwards, Signal Crew No. 11, Willmar, Minnesota, for all time lost while serving a 10-day suspension, December 14 to and including 23, 1980, as a result of investigation held December 1, 1980, and that reference to that investigation be deleted from his personal record.

Claim No. 2. General Chairman file: TC-81-238. Carrier file: SI-81-3-16A

On behalf of Assistant Signalman J. A. Marthaler, Signal Crew No. 11, Willmar, Minnesota, for all time lost while serving a 20-day suspension, December 14, 1980, to and including January 2, 1981, as a result of investigation held December 1, 1980, and that reference to that investigation be deleted from his personal record."

OPINION OF BOARD: On November 17, 1980, while traveling from one location to another a Signal Department boom truck, driven by Marthaler and in which Edwards was a passenger, struck a railroad bridge. Marthaler was not injured, Edwards received minor injuries but the damage to the boom truck was substantial. Thereafter, an investigation was scheduled to ascertain the facts and determine responsibility for the accident. Four days prior to the investigation Claimants' representative inquired about the possibility of waiving the investigation pursuant to Rule 54. The Carrier's response was that there were possibly three employees involved in the accident and therefore an investigation was necessary to develop all the facts before it could be determined who, if anyone, was responsible and to what extent.

On December 1, 1980, a hearing was held at which Claimants were represented. They were afforded the opportunity to examine and cross-examine witnesses and a transcript was made of the testimony. Claimants argue that a procedural error was committed in that they were not permitted to waive the investigation under Rule 54, which states in pertinent part:

"F. The investigation provided for herein may be waived by the employee in writing, in the presence of a duly authorized representative."

The letter agreement dated January 25, 1980 concerning the application of Rule 54F states that the employee may waive the hearing:

"... provided that such waiver specifies the discipline to be assessed and is confirmed in writing in the presence of his duly authorized representative and proper officer of the Carrier."

The record establishes that the attempt to invoke Rule 54F never went beyond the inquiry stage. Certainly there was no agreement as to the discipline to be assessed. In view of the possible involvement of a third employe in the accident there was reasonable cause for the Carrier to insist upon a full investigation.

The claim that the Carrier violated Rule 56 by failing to advise and instruct Edwards in relation to his assignment has no merit. The record fails to show that this defense was raised at the hearing. It is conceded that the boom truck was equipped with seat belts and that neither Claimants wore them at the time their truck struck the bridge. Indeed, Edwards admitted that at no time during the trip had he used the seat belt even though he knew that the Safety Rules required such use.

As to the incident itself the Carrier found that there were no mitigating circumstances to absolve either Claimant.

The decisions of this Board have consistently held that within the scope of its review, both as to culpability and the amount of discipline, the ruling made on the property will not be disturbed when the charge is supported by substantial evidence and the amount of discipline is not arbitrary or capricious.

The Board is of the opinion that the Carrier sustained its burden of proof of the charges against both Claimants, accordingly, their claims are denied.

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.

A W A R D

Claim denied.

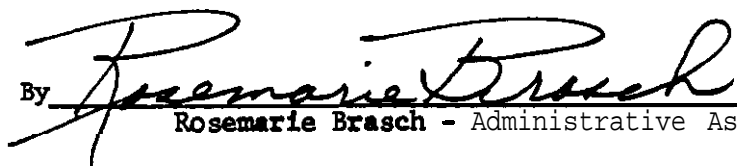
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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.