

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24396  
Docket Number MW-24481

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ Seaboard Coast Line Railroad Company

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

(1) The five (5) days of suspension imposed upon Section Foreman Joe Frazier, Jr. for alleged violation of Rules '14', '6', '29' and '502' was capricious, arbitrary, unwarranted and on the basis of unproven and disproven charges (System File C-4(13)-JF/12-39(80-68) G).

(2) The claimant's record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, J. Frazier, is a regularly assigned Section Foreman at Bennett Yard. On June 2, 1980, in the course of his assigned duties, he drove the section truck to the work area and parked it adjacent to an active track. During the course of the day, the passenger door of the truck was left open. A gondola car, kicked into the track by a switch engine, struck the open door of the truck. Charges of violating safety rules were brought against a Trackman who left the door on the truck open and Claimant for his responsibility in the matter.

A hearing was held in the matter. Both Claimant and the Trackman were found to have violated numerous safety rules. Both were assessed a five-day suspension. Claimant contends that he was not responsible for the truck door being left open. Therefore he should not be disciplined as severely as the Trackman who actually left the door open, fouling the track.

This Board has reviewed the record of this case and has concluded that Carrier has been arbitrary in assessing Claimant and the Trackman the same level of discipline for their respective involvement in the accident. Testimony revealed that Claimant, as well as other people, parked trucks at the location where the accident occurred for many years. As long as there were no accidents, it appears that Carrier condoned this practice. Claimant cannot be held responsible for the door being left open on the truck. He cannot watch every move his men make at all times. It is reasonable to conclude that everyone who works around the railroad is aware of moving trains and the damage they can do if they hit objects on or near the track.

The Trackman left the door on the truck open. He was the major contributor to the accident and he should, by all standards of even-handedness, bear the brunt of the blame. Consequently, he should suffer the more severe discipline if Carrier chooses to discipline both him and the Foreman. It is this Board's opinion that Carrier could have made its point with Claimant by issuing a stern warning, together with a two-day suspension without pay.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

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 26th day of May 1983.