

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24852

Docket Number MW-24986

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation (former
(Penn Central Transportation Company)

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

(1) The sixty (60) days of suspension imposed upon Trackman R. B. Smith for alleged "responsibility in destruction of Company property in connection with truck accident you had with Boom Truck G-6633 at approximately 1:45 p.m. on August 22, 1980" was without just and sufficient cause and on the basis of unproven charges (System Docket 636).

(2) The claimant's record shall be cleared of the charge levelled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant, Trackman R. B. Smith, an employee of nine years was assigned to drive a Boom Truck on August 22, 1980. This was not his regular assignment but he had driven similar equipment occasionally for three or four years. While descending a hill near Saltsburg, PA. at approximately 1:45 P.M. Claimant's vehicle was involved in an accident. The hill is marked at the top with a warning sign for trucks. The accident took place approximately one mile from the crest at a point where the road ends in a "T" intersection. There are two "S" curves between the crest and that intersection. Claimant made three trips over that road that day. He had the equipment in fourth gear going up the crest of the hill and when he began his descent all three times, and did not find it was necessary to down shift. Claimant contends that as he applied the brakes upon descending the third time they failed. When he reached the intersection he turned to the right as he felt that gave him more room to bring the vehicle under control. The vehicle "flipped over" on its side. There were skid marks for a distance of about 400 feet, ending where the vehicle rolled over.

Action Truck Service Company inspected the brakes after the incident. In a report dated September 5, 1980 and introduced as Exhibit "A" at the hearing it reported inter alia that there was no fluid in the master cylinder but no evidence of spillage due to the accident. It considered the accident resulted from driver failure to report low brake pedal condition and a failure to check the master cylinder fluid level at the most recent P.M. inspection and state inspection. After trial Claimant received a sixty day suspension for his "responsibility in destruction of Company property...".

Claimant contends before this Board that the inspection report should be disregarded as no one from Action Truck Service Company testified at the hearing.

This Board notes the driving of this vehicle was not claimant's regular assignment and there is little likelihood he would have checked the master cylinder. The skid marks indicate the brakes were at least partially operative. That fact plus Claimant's failure to shift down despite the truck warning sign establish Claimant was to a great extent responsible for the accident.

Although Claimant was at fault this Board concludes the condition of the vehicle's brakes may have contributed to the accident. Accordingly, the suspension was excessive and we shall reduce it to thirty days. Claimant is to be compensated for thirty days.

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

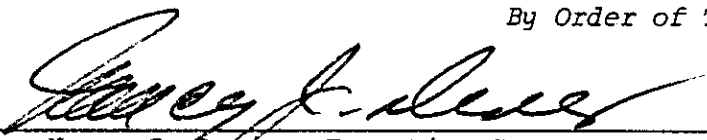
That the discipline was excessive.

A W A R D

Claim is sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984