

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24928
Docket Number MW-24912

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Seaboard System Railroad

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

(1) The thirty (30) days of suspension imposed upon Foreman E. H. Sams for alleged violation of "Rules 751, 753 and 754" was without just and sufficient cause (System File C-4(13)-EHS/12-39(81-42) G).

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

OPINION OF BOARD: On April 21, 1981 a hearing was held to investigate the circumstances surrounding an incident which occurred on April 14, 1981 allegedly involving Claimant E. H. Sams in the violation of a number of Rules. By letter of April 30, 1981 after a fair and impartial investigation Claimant Sams was found guilty of violating Rules 751, 753 and 754 in the operation of his motor car which was struck by a reverse moving train. Claimant was assessed a suspension of thirty (30) days.

The record before the Board shows sufficient substantial evidence to warrant conclusion that the Claimant is guilty as charged. Claimant did leave the motor car with an employee who was not properly qualified to operate the car on the date of the incident. Claimant intended for that employee to push the car (rather than operate it) in the event the train began backing up, since Claimant was aware of a blackout in effect in the area in which he left the motor car; a blackout which he did not read to the employee left in charge. In addition, the Claimant was to carry two flagging kits and by testimony he indicated that he "actually didn't have one." As such, Claimant is clearly guilty and the only issue for this Board to consider is the discipline imposed by Carrier.

Claimant had clearly been instructed that the train would back into his block. Whatever caution he exercised was neither in compliance with the above operating rules, nor sufficient to prevent his motor car from being hit by the train and dragged forward. He failed to follow safety rules designed for the protection of employes and the public. In considering the quantum of discipline assessed this Board must consider that each employee has a responsibility to protect property and lives by following such Rules as were instituted to reduce accidents and protect safety. No employee can be relieved of this serious responsibility by either exercising their own perceived cautions, no matter how reasonable, or by demonstrating the negligence of others. This Board has held on numerous occasions in prior Awards that in cases of discipline it should be assessed for not only punitive reasons, but also for corrective, instructive and training measures (Second Division Award 6485; Third Division Awards 5372; 19037 inter alia). Safety issues are serious issues and the Carrier must view them in that manner and assess discipline accordingly.

Carrier has the right to require and expect its employes to comply with its operating rules. This Board holds that the discipline imposed by Carrier in the instant case is justified considering the testimony presented at the hearing and the serious nature of the incident. Finding no evidence that the Carrier's assessed discipline was unreasonable in the case at bar, or unrelated to the seriousness of the safety issues that the Carrier is obligated to consider, this Board will leave the Carrier's action undisturbed.

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

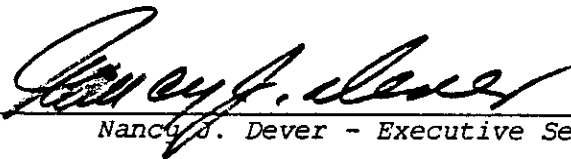
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1984.