

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25001  
Docket Number SG-25223

Paul C. Carter, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Railroad Signalmen  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

System Docket 1926-D, Southern Region

Appeal on behalf of C. M. Hendrickson, who was dismissed by Notice dated June 11, 1982."

OPINION OF BOARD: Claimant had about five and one-half years of service with the Carrier. On June 3, 1982, he was notified to attend a trial in connection with the charge:

"(A) Violated Rule 3342 of the Conrail Safety Rule Book S-7C which states: Vehicle driver is responsible for the safe and proper operation of the vehicle in his charge and the safety of the occupants.

(B) Violated Rule 3306 which states in part: On or off track **self-propelled or** other equipment that is not continuously attended by the qualified employee in charge and is left on the track for a short period of time while working must be protected against movement by having:

- (a) Engine or motor stopped and removing the ignition key.
- (b) Clutch **or** gears engaged.
- (c) Brake (when so equipped) set to hold.

**NOTE:** Such equipment left off the track must:

- (a) **Be** clear of the track.
- (b) **Not** obstruct crossing, pathway **or** platform.
- (c) **Be** locked with special lock.

On May 28, 1982, at approximately 10:00 AM you parked Company Vehicle E-4174 adjacent to track fouling No. 2 track at MP-3.8 on Oasis Branch (the vicinity of 2358 Gladstone Avenue) which was subsequently struck by N&W train LN15C-Engine No. 1386 damaging #-4174 and a **private-owned** vehicle."

The trial was conducted on June 10, 1982, a transcript of which has been made a part of the record. Following the trial, Claimant was notified on June 11, 1982, of his dismissal in all capacities.

The Safety Rules involved are quoted in the letter of charge. In the investigation there was substantial evidence adduced that Claimant parked a Carrier vehicle on Company property in Cincinnati, Ohio, in such a position that it fouled a track and was struck by a Norfolk and Western train, with the result of what is described as extensive damage to two N&W engines, total destruction of the Carrier vehicle E-4174, and also total destruction of a privately owned automobile.

Claimant attempted to excuse the incident as resulting from "poor judgment" on his part. The Claimant's representative objected to Claimant's past discipline record being read into the trial. The Board has issued numerous awards upholding such procedure. The prior record may not properly be used in determining guilt, but may be used to determine the discipline to be imposed for a proven offense.

The Organization argues that while Claimant exercised bad judgment in where he parked the Company truck, such action was not a deliberate act of wrong doing and that dismissal was excessive. We consider Claimant's actions as constituting extreme carelessness, resulting in destruction of Carrier property and additional expense. There is no proper basis for the Board to interfere with the discipline imposed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

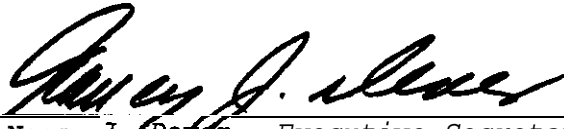
A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.