

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25304
Docket Number SG-25390

Edward L. Suntrup, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: {
(Seaboard System Railroad

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Seaboard Coast Line Railroad on behalf of Signal Maintainer L. E. Kerley:

(a) Carrier should now reimburse Claimant for all time lost and make him whole for all benefits of the current Signalmen's Agreement, as amended.

(b) Carrier should remove from Claimant's record any reference to investigation of November 4, 1982. [General Chairman file: Claim-47 IL E. Kerley]-82. Carrier file: 15-47 (83-4)K2]

OPINION OF BOARD: On October 20, 1982, the Carrier issued a joint notice to the Claimant, Signal Maintainer L. E. Kerley, and to two (2) other employees, who were all directed to report for a formal hearing on October 27, 1982, to place responsibility, if any, in connection with the collision between Carrier vehicle SCLV 771061 and Amtrak Train No. 97 on October 13, 1982, at approximately 1:49 P.M. The vehicle was struck in the vicinity of West Lake Wales, Florida on the Miami Subdivision of the Jacksonville Division.

The Claimant was charged with violation of General Notice, Rule B (1) through (4), Rule M (3); Operating Rule 1182; and Manual of Rules and Instructions governing the Use and Operation of Highway Motor Vehicles No. 15.

After requests for postponement by the Organization the hearing was held on November 4, 1982, after which the Claimant was notified on November 17, 1982, that he had been found guilty as charged, except for Manual Rule 15, and that he was being assessed a five (5) day suspension from service from November 27, 1982, through December 1, 1982, inclusive.

The record shows that Amtrak Train No. 97 struck a Carrier service vehicle, which was a one ton pick-up equipped with 4-wheel drive and a front-end and overhead winch on the date in question. The Claimant was a passenger in the truck when the accident occurred. He was sitting on the passenger side of the truck cab. The employee who was driving the truck was a Communications Maintainer and the employee sitting in the middle, between the driver and the Claimant, was a Relief Communication Maintainer. When the train struck the truck the front winch was damaged and the Claimant sustained injuries to his ribs and back for which he was hospitalized. The truck was driven into the path of the train when the Communications Maintainer, who was attempting to negotiate an industrial track next to the main track, fouled the main line as the three employees in the truck were proceeding to the job site.

The instant case centers on the degree of responsibility that the Claimant may have shared with the other **two** employees for the accident. Both of the other employees signed statements prior to the hearing accepting responsibility for such. The hearing Transcript shows that the Claimant admitted that he was **aware** that heavy **undergrowth** under the pole lines next to the tracks -- some 6 to 8 feet high -- was obstructing the view of any oncoming train, and that a train was due between **"1:20 and 2:00 P.M."** which was the time frame in which the maneuver was being made as the three approached their job site. The Claimant also admitted that he made no attempt to look for a train before the collision. In view of the above the Claimant **exercised** no initiative, as he could have since he was sitting on the passenger side of the vehicle by the door, to yet out of the truck in order to ascertain if a train may have been coming since he knew, according to the evidence of record, that this was a distinct possibility. Although the Relief Communications Maintainer was one of the employees who took responsibility for the accident, the Claimant was actually in a better position to have helped avoid the accident since he, and not the Relief Communications Maintainer, was sitting on the passenger side of the truck where he could have easily exited to have checked if a train was coming. A study of the Instructions and Rules at bar shows that the Carrier's General Notice clearly states that safety is first, that Rule B states that employees must be cognizant of Rules and Instructions, that Rule M **requires employees, among** other things, to 'expect the movement of trains, engines or cars at any time, on any track, **in either direction"**, and that Rule 1182 requires **responsible** conduct with respect to tools **and** machines assigned **for employees' use.**

It may well be true that the problem which the driver of the truck experienced when negotiating the industrial track with the vehicle may have been less if the truck had had larger tires which, this **employee** testified at the hearing, Carrier Management had promised when the tires then in use wore out. At the **same** time, however, if any of the occupants of the truck had taken basic precautions, as outlined in the Rules at bar and in view of the information which all of them had at their disposal about the possibility of an oncoming Amtrak train, the accident **would** not have happened. None of the occupants of the vehicle did this, including the Claimant, and he must therefore share some of the **responsibility** for **the** accident. On merits, **the** claim cannot be sustained.

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.


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Claim *denied*.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.