

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25367  
Docket Number MW-25080

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Alton and Southern Railway Company

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

(1) The sixty (60) days of suspension imposed upon Caboose Supplyman D. Chapman for responsibility "in connection with damage to caboose supply truck No. 60" on November 14, 1981 was excessive and wholly disproportionate to the charge leveled against him [System File A&S 1981-1/S 1638-721

(2) The claimant shall be compensated for all wage loss suffered.

OPINION OF BOARD: An investigation was held on November 25, 1981, to determine Claimant's responsibility, if any, in connection with damage to Caboose Supply Truck No. 60 on November 14, 1981. Based upon the trial record, Carrier concluded that he was responsible for the damage since he parked the truck too close to a rail track. He was assessed sixty (60) days suspension.

In defense of his petition, Claimant does not deny responsibility for the accident since he acknowledges that Caboose Supply Truck No. 60 was damaged while he was using it in the performance of his duties. He disclaims total responsibility for the accident, however, since the train crew which was assigned to the train that struck the vehicle was not called to appear at the investigation. He asserts that if there had been a flagman on the point of the train which shoved back to pick up a caboose on perimeter 4, the accident might have been avoided. He cited several First Division Awards on the question of insuring a complete investigation and the parallel necessity of calling all relevant witnesses to testify at a hearing. Moreover, he conditionally avers that if he is responsible for the accident, the penalty imposed was unduly excessive and not commensurate with the magnitude of the incident. (See First Division Award Nos. 12500 and 20094 for a discussion on the importance of calling all relevant witnesses.)

Carrier argues that in view of Claimant's admission that he improperly parked, thus directly contributing to the accident, the discipline imposed was neither harsh nor an abuse of managerial discretion. It asserts that Claimant could have parked the truck so as to be clear of cars on both adjacent tracks, and disputes his position that crew members on the train were by extension responsible for the incident. Carrier contends that switch crews are not required to ride the lead car of a cut in a train for the purpose of avoiding obstructions on a track, and maintains that no evidence was adduced at the trial showing that the switch crew improperly shoved the cars into track 4. It avers that all Maintenance of Way Employees receive instructions on safety rules, etc. and, as such, Claimant was fully mindful of the pertinent rule regarding the movement of trains. In particular, it cites the third paragraph of General Rule L of the Uniform Code of Safety Rules which reads as follows:

"**When** employees are on or near tracks, they must expect the movement of trains, engines or cars at any time on any track in either direction."

It is **Carrier's** position that Claimant was indisputably responsible for the accident and the severity of his carelessness justifies the suspension assessed.

In **our** review of this case, we concur with Carrier's position that Claimant was explicitly responsible for the accident. Our review of the Trial Transcript does not indicate that responsibility can be implicitly shared with the train crew and under the circumstances of the train movement on track 4, **we** find that the crew performed its function according to normative operating standards. Claimant parked his truck in a manner that made contact with the train inevitable, and in the absence of assigned contributory negligence, he is patently responsible for the accident. We disagree with Carrier's assessment that the sixty (**60**) days suspension was appropriate and consonant with the nature of his negligent behavior, since an equitable balance must be struck **between** the Claimant's actions, his past employment record and the manifest ends of the disciplinary process. In effect, it **would** not be in accord with the parties contemplated intention of adhering to progressive disciplinary standards if we sustained the penalty herein. We believe that sixty (**60**) days suspension is excessive. Accordingly, we will reduce this suspension to thirty (**30**) days on the defensible grounds that it is significantly equated with the severity of his negligence and importantly, it will serve as a persuasive lesson to deter others from committing similarly **thoughtless** actions. Claimant is to be made whole for the difference in the reduced suspension.

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:

  
Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of **March** 1985.