

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25914
Docket Number MW-26047

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Northeast Illinois Regional Commuter Railroad Corporation

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

(1) The ninety (90) days suspension imposed upon Welder Helper R. L. Thomas and the dismissal of Welder D. E. Willhoite for alleged violation of 'General Rule "L", Basic Rule "1", Uniform Code of Safety Rules and Rules "L", "N", 4(b), 6, 99(a), 100 of Rules & Regulations for Maintenance of Way & Structures on June 22, 1983 was excessive, unwarranted and in violation of the Agreement (System File NIRCRC-D-1099).

(2) Welder D. E. Willhoite shall be reinstated with seniority and all other rights unimpaired and Messrs. D. E. Willhoite and R. L. Thomas shall be compensated for all wage loss suffered."

OPINION OF BOARD: On the date of the occurrence giving rise to the dispute herein, June 22, 1983, Claimant R. L. Thomas, a welder helper, parked a Carrier motor vehicle too close to the track and the vehicle was hit by a passing deadhead train DHQ 6132, resulting in damage to the truck. Claimant D. E. Willhoite, a welder, was with Thomas and was in charge.

On June 23, 1983, both Claimants were notified:

"You are hereby notified that a formal hearing will be held in the Office of Department Manager-Rock Island Engineering, 127th Street, Blue Island, Illinois, 1:00 PM, Monday, June 27, 1983, to develop the facts, discover the cause and determine your responsibility, if any, in connection with damage to Welders Truck when struck by Deadhead Equipment 6132, approximately 3:12 PM, June 22, 1983, at MP 14 Pole 14 (Purinton Crossover), Blue Island, Illinois, in violation of General Rule 'L', Basic Rule '1' of the Uniform Code of Safety Rules and Rules 'L', 'N', 4 (b), 6, 99 (a) and 100 of the Rules and Regulations for Maintenance of Way and Structures, Form PE-01-RC (NIRCRC Employee Conduct Rules) and any violation of rules and/or instructions in connection therewith.

"Arrange to be present with your representative, if representation is desired, and any witnesses you desire, as provided for in the Maintenance of Way Agreement."

The Hearing was held as scheduled. A copy of the Transcript has been made a part of the record.

On June 30, 1983, Claimant Willhoite was assessed discipline of dismissal and Claimant Thomas was assessed discipline of ninety days actual suspension. The rules referred to in the letter of charge are set forth in the record and will not be repeated here.

We have reviewed the Transcript of the Hearing and find substantial evidence warranting discipline against each Claimant. The accident occurred simply because the truck was parked too close to the track. Both Claimants were aware that the train involved was due. Claimant Willhoite was in charge of the work operation and Claimant Thomas was under the direction of Willhoite. More severe discipline was warranted against Claimant Willhoite than against Claimant Thomas. However, considering Claimant Willhoite's years of service, thirteen years as a welder for the railroad, and the relatively minor damage to the equipment, we find that permanent dismissal of Willhoite was excessive discipline. The time that he has been out of service should constitute sufficient discipline. We will award that Claimant Willhoite be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of service. We will not disturb the discipline assessed Claimant Thomas.

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 assessed Claimant D. E. Willhoite 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. Dover - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.

