

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25938

Docket Number MW-25795

Marty E. Zusman, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(National Railroad Passenger Corporation

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

(1) The disciplinary disqualification of Mr. R. Bayly as truck driver for one (1) year and the ten (10) working days of suspension imposed upon him for alleged violation of Rules 'H' and 'S' was excessive and disproportionate to the charges leveled against him (System File NEC-BMWE-SD-466D).

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

OPINION OF BOARD: By letter dated June 15, 1982 the Claimant was notified by the Carrier to attend a trial on June 24, 1982 to determine his responsibility, if any, for violation of Rules H and S. These two Rules pertain to protecting Company property from damage and in the exercise of care in the use of such property. The Investigation was held as scheduled and by notification of July 7, 1982, Claimant was found guilty as charged and assessed a one (1) year disqualification as Truck Driver and a ten (10) working days suspension.

The record before this Board shows substantial evidence to warrant conclusion that Claimant is guilty as charged. On June 3, 1982, Claimant collided his Boom Truck with an overhead bridge. The record documents the Boom Truck was twelve feet, four inches high and the bridge was clearly marked at a clearance of eleven feet, ten inches. The damage to the Boom Truck was around \$36,000. Claimant had been responsible for the Boom Truck for fourteen (14) months. There is no evidence of obstructed view, unmarked speed limits or lack of warning to the Claimant of an approaching curve and bridge. An Investigation of the matter came to a conclusion that the Claimant "must have been going at an extremely high speed . . ." Among numerous other arguments the Claimant maintained he did not know the height of his Boom Truck as he drove under the bridge. Since the Claimant has been driving said truck for fourteen (14) months, this Board notes that if Claimant did not know the correct height, he most certainly should have known it. There is nothing herein which was presented by the Organization on the property in its numerous arguments that refutes the Carrier's conclusion of the guilt. As such, the Claimant is clearly guilty and the only issue for this Board to consider is the imposed discipline.

This Board holds that the discipline imposed by Carrier in the instant case is fully justified considering the testimony presented at the trial and the serious nature of the incident. Claimant had previously received a formal reprimand for the violation of Safety Rules associated with his use of the Boom Truck. This Board can find no evidence whatsoever that the Carrier's assessed discipline was unreasonable in the case at bar, or unrelated to the seriousness of the charge and incident. This Board leaves 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 hearings:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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

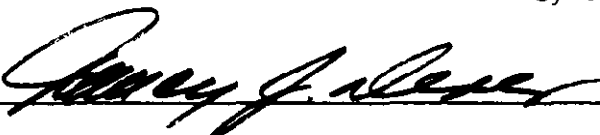
That the Agreement was not violated.

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 26th day of February 1986.

