

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26687  
Docket Number MW-26479

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company

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

1. The thirty (30) days of suspension imposed upon Track Machine Operator R. L. Nadrchal for alleged 'responsibility and involvement . . . with accident on the North Platte Branch' was arbitrary, capricious, without just and sufficient cause and on the basis of unproven charges (System File 5-18-12-14-54/013-210-N).

2. The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant herein, a Track Machine Operator, was assessed a thirty day suspension when the Ballast Regulator he was driving hit a two ton farm truck at a crossing. He was charged and found guilty of responsibility for the accident. The damage to the truck was approximately \$6,000.00 and the Regulator had a \$2.00 part replaced with an hour's labor involved.

The evidence indicates that Claimant's Regulator was the second piece of equipment being moved. The first piece of equipment approached the crossing and the farm truck stopped. Claimant's equipment, about 450 feet behind it, was traveling at about 10 to 15 MPH and Claimant testified that he saw that the truck had stopped. He proceeded and when he was about 100 feet from the crossing the truck started across. The record indicates that Claimant applied the brakes about 25 feet from the crossing and was traveling at about 5 MPH at the time of impact. Claimant had sounded his horn at the correct intervals and distance from the crossing. The accident report clearly attributes responsibility for the accident to the farm truck driver. The Assistant Roadmaster, who witnessed the incident, testified that he did not have enough men to flag the crossing. The Supervisor was not disciplined.

As the Board views it, the issue is in essence whether Claimant must bear responsibility for the accident. While it is true that the truck had stopped for the first vehicle, it started to move when Claimant was 100 feet away. Claimant then had the responsibility to stop or attempt to stop his vehicle to avoid an accident. The fact is that he was going too fast and did not apply his brakes till 25 feet from the truck, according to his own testimony. Thus, even though the basic responsibility for the mishap rests with the truck driver, Claimant must bear some culpability for the accident as well. Under the circumstances, it must be concluded that the discipline meted out by Carrier in this case was arbitrary and excessive (see Third Division Award 23910). The penalty shall be reduced to a ten day 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.