

The Third Division consisted of the regular members and in addition Referee Marty E. Zusma" when award was rendered.

(Brotherhood of **Maintenance** of Way **Employees**)
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation - (Amtrak)
Northeast Corridor

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

(1) The fifteen (15) days of suspension imposed upon Truck Driver J. W. Turner for alleged violation of Rule 'H' "as excessive (System **File** NEC-BMW'+SD-982D).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employee** or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was involved in a" automobile accident on May 18, 1984 and was subsequently charged with alleged violation of Rule H which **states** in pertinent part:

"Employees must take every precaution to guard against loss and damage to the Company property from any cause...."

After two postponements, Trial was held on June 26, 1984. By letter of July 11, 1984, Claimant was notified that he had been found guilty of violating said Rule and was given a fifteen (15) day suspension.

The transcript indicates that the Claimant had dropped off employees from a" AMTRAK van shortly after twelve noon. Claimant thereafter found it necessary to back the **van** up after he could not make a safe northward turn. Immediately upon reverse movement Claimant's van impacted a car drive" by another employee.

The Organization argues on the property that the other employee shared some "culpability." It further proposed reasons why said accident "as a "set up" and argued about the Organization's significant doubts as to the damage and story of the other employee involved.

A complete review of the record as handled on the property indicates that Claimant did back his AMTRAK van into the other vehicle. Whatever, precautions he took were insufficient to avoid damage to Company property. The Board finds no probative evidence to substantiate any of the Organization's claims. There is no evidence of record as to the "culpability" of the other employee. The two Accident Reports do not support this assertion. Nor is there any **evidence** to substantiate the Claimant's beliefs that he was "set up." On the whole of the record there is adequate evidence to find that the Claimant is guilty as charged.

The only thing left for this Board to decide is whether the discipline assessed is progressive and commensurate with the seriousness of the offense. The Board finds nothing in the record that indicates that this is anything other than Claimant's first offense. Claimant states in the record that he "as unsure as to procedures because he had "never been involved in an accident."

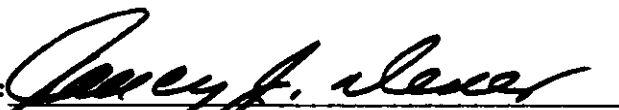
The Board finds that the discipline assessed "as excessive in light of the record before this Board. Claimant's discipline shall be reduced to ten (10) days with Claimant compensated for "age **loss**."

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.