

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Railroad Company
(former St. Louis-San Francisco Railway Company)

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

(1) The thirty (30) days of suspension imposed upon Track Foreman C. G. Timmons for alleged failure to comply with Rules 62, 63 and 500 on September 25, 1985 was unjust, unreasonable and on the basis of unproven charges (System File F-12103/EMWC 85-12-23B).

(2) The claimant's record shall be cleared of the charges leveled against him and he 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.

On September 25, 1985, shortly after noon, the Claimant, while working as a Track Foreman, was operating a hi-rail truck when it was involved in a collision at a grade crossing with a pickup truck. The evening of the accident a Carrier Roadmaster visited the site and conducted an on the ground investigation. He checked skid marks and established basic facts connected with the collision and the point where the involved vehicles came to rest. It was his opinion that the pickup truck that skidded into the hi-railer after it was at least three-quarters of the way through the crossing:

"...was not going overly fast."

He also decided that:

"...Timmons was at fault because he entered the intersection in front of the oncoming vehicle."

On September 30, 1985, the Roadmaster suspended Claimant for thirty days. Claimant's General Chairman disputed the suspension and an investigation was convened at which the circumstances of the accident were developed. Following the conclusion of the investigation the suspension was affirmed by Carrier.

We have examined the transcript of the investigation and conclude that Carrier has failed to establish that Claimant was at fault for the collision. The facts of the accident indicate that:

"...the speed limit for highway traffic in the area is 30 miles per hour.

...the vehicle Claimant was operating entered the crossing at approximately three miles an hour.

...the pavement was wet from a recent rain.

...the two employees in the hi-railer were unable to estimate the speed of the pickup truck before the collision.

...the pickup truck that struck the hi-railer left skid marks on the pavement of at least 40 feet before the impact and skidded further after impact.

...the point of impact was on the right rear tire of the hi-railer and occurred when the vehicle was almost clear of the intersection.

...after impact the hi-railer derailed and skidded another twenty feet.

...in 37 years of service, with 25 years as a General Foreman, Claimant never before had a motor car or a vehicle involved in a train or crossing incident.

...the driver of the pickup truck had previously had his license suspended because of the point system and at the time of the accident had additional points on his record for speeding."

From these facts, the Carrier would have us believe that the:

"...unit being operated by the Claimant collided
with a pickup truck at a public crossing...."

while it is obvious that the pickup truck skidded onto the tracks and struck the hi-railer as it was about to clear the crossing.

We are mindful that operators of Carrier's hi-railer equipment must approach and pass through public crossings with their vehicle under complete control being prepared to stop if necessary. Also movements over such crossings must be made in a manner that eliminates a chance for accident, being manually flagged if necessary. However, we have difficulty in understanding how Carrier's regulations in this regard were violated in this case when Claimant's vehicle, not out of control, operating through a very low traffic crossing, at a prudent speed, was struck in the rear quarter by a skidding vehicle out of control.

Carrier has directed our attention to Award 30, PLB 2206, involving the same parties and dealing with another crossing incident. As we understand the facts involved in Award 30 the situation was almost the reverse of what we are faced with. In that case the:

"...Hi-Rail Truck was not under complete control
...and slid well into the crossing."

On this record it is our opinion that the investigation did not establish that Claimant violated Rules 62, 63 and 700 of the Rules of the Maintenance of Way Department. Accordingly, the discipline will not be allowed to stand. The claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

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