

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

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

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

(1) The forty-five (45) days of suspension imposed upon Trackman D. H. White for alleged violation of Rule #4233 of Amtrak's Safety Rules and Instructions 'In that on Monday, November 28, 1983 at approximately 9:15 PM you operated vehicle #AB43251 without proper motor vehicle license and ran vehicle into telephone pole on Chestnut Street in Trenton, New Jersey' was without just and sufficient cause (System File NEC-BMWE-SD-803D).

(2) The claimant's record shall be cleared of the charge 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 employe or employes involved in this dispute are respectively carrier and employes 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.

The evidence reveals that the Claimant, while operating a Carrier vehicle, ran into a telephone pole. The record also reveals that he did not possess a valid driver's license at the time of the accident.

The Organization mainly contends that the Claimant's Supervisor knew that he did not have a valid license. Consequently, the Supervisor's order to drive the Carrier's vehicle was negligent. Moreover, the vehicle itself had not been kept in a safe condition, and, finally, the Claimant had never operated the vehicle before and was unfamiliar with it.

The Board has carefully reviewed the transcript of the Investigation held on this matter and the various contentions advanced by both parties. On the basis of this review, we conclude that the Carrier has met its burden.

Irrespective of what the Supervisor should or should not have known or done, with respect to the driver's license argument, the Claimant had a responsibility to inform his Supervisor that he did not have a valid license.

With respect to the contention that the vehicle was not properly maintained, we find no evidence to support such an assertion.

Turning to the penalty assessed by the Carrier, while the evidence supports a finding of guilt to the charges, under all the circumstances, we conclude that a twenty (20) day suspension would be more commensurate with the Claimant's transgression.

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 12th day of August 1988.