

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SPTC-EL):

Claim on behalf of Relief Signal Maintainer D. A. Kato, for reinstatement to service to his former position with all time lost and benefits restored, account of Carrier violated the current Signalmen's Agreement, as amended, when it did not afford him a fair and impartial hearing and assessed him with excessive discipline. Carrier file 450-24A."

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, a Relief Signal Maintainer on the Pasadena District, was driving a Carrier vehicle on the morning of February 20, 1986, when he rear-ended another vehicle on the I-10 East Freeway. Apparently the other driver, who never was identified, sustained little damage to his vehicle but the fan on the Carrier truck was jammed into the radiator. Another Carrier employee, who saw the disabled vehicle on the highway, helped Claimant pull the fan from the radiator so he could drive the truck to his appointed duties. Claimant never did report this accident and damage to anyone in authority. It was discovered about 12 hours later by the Carrier's Assistant Signal Supervisor, who reported it to Claimant's immediate Supervisor.

When interviewed by the Assistant Signal Supervisor on February 21, 1986, Claimant at first denied any knowledge of the accident saying: "What accident?". After Claimant was supplied details of the report of damage, Claimant admitted the accident and stated he failed to report it because he was afraid of disciplinary consequences based upon his past record. The foregoing facts were developed at a Hearing on March 18, 1986, including Claimant's admission of the accident and the unsuccessful attempt to cover it up. After reviewing these facts and Claimant's prior discipline record, which showed 60 demerits for a vehicular accident with a Carrier truck; 45 demerits for failing to secure a grinder to the truck; 30 demerits for payroll falsification; and a three-month suspension for violating Rule G and various other Rules, Carrier dismissed Claimant from service.

The Organization appealed the discharge on grounds that Carrier failed to prove culpability and that the penalty imposed was discriminatory and arbitrarily harsh. The evidence, including Claimant's admissions, overwhelmingly support Carrier's finding that he was guilty as charged. The Organization points out that Carrier has not discharged every employee who failed to report a "fender-bender" accident and argues Claimant therefore was treated in a discriminatory and unreasonably harsh manner. That position ignores the compounding effect of Claimant's attempt to cover up the incident and his denial of knowledge when confronted. Moreover, Carrier was within its rights to consider Claimant's poor prior discipline record in determining what quantum of discipline to impose. In the circumstances presented, we find no proper basis for disturbing Carrier's judgment in this case.

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 29th day of March 1989.