

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Kansas City Terminal Railway Company

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

(1) The discipline imposed upon Truck Driver E. Vaca, Jr. and Helper C. R. Weathers for alleged violation of Rules K and M on February 6, 1990 was arbitrary, capricious and on the basis of unproven charges.

(2) The Claimants shall have their records cleared of the charges leveled against them and they 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 Vaca is employed by Carrier as an operator and truck driver. Claimant Weathers is employed as a trackman. On February 6, 1990, Vaca was assigned as truck driver of Truck 30, and Weathers was taken away from his regularly assigned duties on a track gang and assigned as helper to Claimant Vaca. The Claimants were assigned by the Engineer of Maintenance of Way to deliver a bundle of twenty five cross ties to Track Gang 7, working in Carrier's Blue River Yard.

When Claimants arrived at Tower 9, they drove across Track 402 and headed west on the roadway between Track 402 and Main Line 3. Enroute to the unloading site, they passed Signal 38 RC. Once the cross ties were unloaded, Claimants backed out the way they had come because of limited maneuvering room. In the process of backing out, the rail rack on the rear of the truck caught the ladder on Signal 38 RC and damaged both the ladder and the signal. Total damage was estimated to be \$1,059.

By identical letters dated February 8, 1990, both Claimants were notified as follows:

"You are ordered to report for a formal hearing and investigation on Thursday, February 15, 1990, at 9:00 a.m., in the conference room, 3rd floor, 3435 Broadway, Kansas City, Missouri, to determine your responsibility, if any, with damaging Signal 38 RC at Rock Creek on Tuesday, February 6, 1990 at approximately 10:40 a.m. You are charged with violation of Rule K, damaging Company property, and Rule M of the Rules and Regulations of the Kansas City Terminal Railway Company, dated May 15, 1978. You are also charged with the careless operation of your vehicle, Rule 4, of the Kansas City Terminal Railway Company Rules Governing Operation of Highway Motor Vehicles, dated September 1, 1970."

Rules K and M read in pertinent part as follows:

"K. ...In case of danger to the Company's property or interest employees must unite to protect it, and must take every precaution to guard against loss and damage from any cause."

"M. Safety is of first importance in the discharge of duty. Obedience to the rules is essential to safety. To enter or remain in the service is an assurance of willingness to obey the rules."

The Hearing was postponed and ultimately held on February 27, 1990. Following the Hearing, Claimant Vaca was suspended from Carrier's service for five working days, and Claimant Weathers was suspended for one working day. On March 19, 1990, the Organization appealed the Claimants' discipline. That appeal was subsequently processed up to and including the highest Carrier Officer designated to handle such matters, after which the issue remained unresolved.

It is the Carrier's position that Claimant Vaca's testimony at the Hearing establishes his culpability for this incident:

"Q. What happened after you got your material unloaded?

A. Well, it was starting to sleet, and I was backing up. When I got down to where the single (sic) was at, backing up, I noticed in my right view mirror looking east where the single (sic) was on

the right-hand side, the signal was coming up and I cut my tires where I could maneuver around the high signal. My left front tire started climbing on top of the rail. At that point, it jumped off the rail and stopped. My right mirror was close to the signal. If I would have proceeded backwards, my mirrors would have struck the high signal. To prevent that, I put my truck in forward motion to straighten the truck up as much as I could to get a better clearance angle to back out in between that roadway back into 405 or track 402.

Q. What happened when you started backing in a forward direction?

A. When I went in a forward direction, the back end of the truck slid to the right a little bit and the rack on the right-hand side must have caught the signal because I can't see the top of that rack out of my right side mirror. I can look all the way down the side of the truck, but I cannot see the top of the rack. So when I moved forward, I didn't know that the rack had caught the ladder and pulled it."

Carrier argues that because Claimant Vaca knew that he had limited vision, he should have instructed Helper Weathers to stand outside and direct him in order to clear the signal.

The Organization maintains that the weather conditions were such that a minor accident was inevitable in the circumstances. Thus, Claimant Vaca should not be held responsible for road conditions he could not avoid.

Carrier bases its discipline of Claimant Weathers on the premise that he did not "unite" with Claimant Vaca to protect Carrier's property.

In light of Claimant Vaca's admission that he knew he could not see the entire truck in his rear or side-view mirrors, the Board finds no reason to overturn Carrier's assessment of discipline in his case. Claimant Vaca's failure to direct Claimant Weathers to stand outside the truck as a "second pair of eyes" outweighs any mitigation of his culpability by existing weather conditions.

Under the circumstances, however, Carrier's discipline of Claimant Weathers is without foundation. Claimant Weathers title on the day in question was "Helper." He was under the direct supervision of Claimant Vaca. Accordingly, it was not Claimant Weathers' responsibility to take the initiative in this incident. It is unreasonable to discipline Claimant Weathers for assuming that if Claimant Vaca had needed assistance in maneuvering the truck he would have asked for it. (See Third Division Award 19853)

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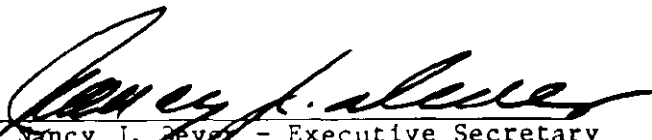
Award No. 29453
Docket No. MW-29893
92-3-91-3-261

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.