

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30118
Docket No. MW-29799
94-3-91-3-160

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Elgin, Joliet and Eastern Railway Company

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

1. The discipline imposed upon Track Foreman E. Maisel and Trackman R. Bates for responsibility with the collision of the tie crane and an automobile at Renwick Road at approximately 11:40 AM, August 22, 1989, was on the basis of unproven charges and in violation of the Agreement (System Files SAC-17-89/UM-40-89 and SAC-18-89/UM-41-89).
2. The discipline imposed upon the Claimants shall be rescinded and their records cleared of the incident involved here.

Note: This Division has recommended that only one party submit the transcript as a part of the record in cases of this kind and has suggested that the Carrier will ordinarily be the party submitting the transcript. Therefore, the Employes will not submit the transcript but will expect the Carrier to submit a true transcript as part of its submission for the record in this case, as per the last sentence of the first paragraph of 'INSTRUCTIONS FOR PREPARING SUBMISSIONS TO THE THIRD DIVISION ...' dated December 18, 1958."

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 employe 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.

This case involves two Claimants, a Track Foreman and a Trackman. On August 22, 1989, the Foreman was in charge of the movement of a hi-rail truck and a tie crane which was pulling two push cars during their on-rail movement from Joliet, Illinois to West Chicago, Illinois. The Foreman was driving the hi-rail truck and the Trackman was operating the tie crane which was pulling the two push cars. During this movement, the tie crane and its two push cars were involved in a crossing accident with an automobile in the vicinity of Plainfield, Illinois. As a result of this accident, the Claimants were instructed by notice dated August 30, 1989, to appear for an Investigation on September 6, 1989, to develop facts and determine responsibility, if any, in connection with the collision. Both Claimants were informed that they had been found to have responsibility in the accident. The Foreman was disciplined by an assessment of thirty demerits. The Trackman was disciplined by an assessment of fifteen demerits. There are no procedural errors present in the on-property handling of this case and it is properly before this Board for resolution.

The position of the Organization in this case is that the charge notice issued to the Claimants was not precise as required by Rule 57(a) of the Agreement and therefore the entire proceeding was tainted. It further argues that the operator of the automobile which collided with the push cars which were being pulled by the tie crane was the primary culprit in this collision -not the Claimants.

The Carrier's position is that the Claimants were properly charged and found at fault on the basis of substantial evidence including the Claimant's own testimony and that the discipline as assessed was commensurate with the proven infraction.

We have examined the hearing notice and the hearing transcript and are of the opinion that the notice of hearing was sufficiently precise to apprise the Claimants of the purpose of the hearing and the situation which was to be investigated. At the beginning of the hearing, each Claimant candidly acknowledged that he was ready to proceed with the hearing. The testimony of each Claimant at the hearing established the fact that they knew what was being investigated and were cognizant of their role in the investigation. The Organization's argument relative to "precise charge" is, therefore, rejected.

From the testimony of the Claimants, it is apparent that they each knew that they had a responsibility to manually flag the crossing. The Foreman readily admitted:

"The way I look at it, if there is traffic, you can't go on there. You are supposed to get out and flag the crossing and get the machine safely across the crossing."

The Trackman/tie crane operator acknowledged that, as he moved the tie crane on to the crossing, he saw the automobile approaching the crossing. He stopped his movement, and then decided to continue across the road crossing. He testified:

"I wanted to back up. All of a sudden, I said this lady doesn't even see me I don't think. So, I just kept going because if I had tried to back up she would have hit me."

Both men admitted that there was no flagman at the crossing. The Foreman acknowledged that he did not instruct any of the other crew members to flag the crossing. The responsibility of the Claimants has been established by substantial evidence. The claim as presented to the Board is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin / lw
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.