

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30659
Docket No. MW-30604
95-3-92-3-379

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (Chicago Central and Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (letter of censure) imposed upon Mr. D. Carroll for alleged violation of Rule 885 and Safety Rules 637, 638(g) and 648 on January 2, 1991 was arbitrary, capricious and on the basis of unproven charges (Carrier's File BMW 91-002).
- (2) The Claimant shall receive the benefit of the remedy prescribed by the parties in Rule 35(g)."

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 respective 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 January 2, 1991, Claimant was operating his assigned vehicle in the vicinity of the shop area at the Waterloo Yard. When Claimant attempted to negotiate a turn, his vehicle slid on a patch of ice, striking a rail car adjacent to the roadway. As a result, the vehicle sustained damage to the headlight and hood. Claimant's immediate supervisor was not on the scene but a Mechanic, whom the supervisor had "left in charge" was working nearby. The Mechanic heard the sound of the impact and came to investigate. Claimant advised the Mechanic of the circumstances, and on January 3, Claimant informed Carrier's Insurance and Administrative Clerk of the accident. She instructed the Claimant to obtain estimates for the repair and when the final estimate was

negotiated, repairs were initiated.

On January 8, 1991, the Engineer of Track "noticed the absence" of one of the Mechanic's trucks, and upon inquiring as to its whereabouts, learned of Claimant's accident. The Engineer of Track contacted the Insurance and Administrative Clerk and obtained copies of her insurance reports concerning the accident. On that same day, Claimant was directed to attend an Investigation with regard to the events of January 2.

On January 24, 1991, Carrier notified Claimant that as a result of the Investigation he was being "censured because of failure to properly operate assigned company vehicle which resulted in an accident," and for failure to "promptly and properly report said accident to the proper authority."

So far as this record shows, the Mechanic was Claimant's "acting immediate supervisor" to whom he reported the accident immediately. Within 24 hours of the accident the necessary report forms were completed and in the possession of the Insurance and Administrative Clerk, the designated officer clerk in charge of the vehicles. Nor has Carrier established that Claimant was exceeding the legal limit, or effectively refuted Claimant's testimony that at the time of the accident he was traveling approximately three miles per hour. Mere suspicion and speculation are not sufficient to support disciplinary action. Carrier has failed to prove the misconduct charged and the claim must be sustained.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.