

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31804
Docket No. MW-32306
96-3-95-3-137**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood that:

- (1) The dismissal of Vehicle Operator R. A. Taylor for his responsibility for the accident involving Vehicle N8006D which hit an overhead bridge at 6th and Booth Streets, Chester, Pennsylvania on January 12, 1994, which resulted in extensive damage to said vehicle and personal injury to Mr. T. E. Bratcher, was arbitrary, capricious, excessive and in violation of the Agreement (System Docket MW-3257D).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

On January 12, 1994, Claimant was driving a boom truck westbound on Booth Street when he struck an overhead bridge. The truck's required clearance was 12 feet, 6 inches. The bridge's clearance was 12 feet.

On January 25, 1994, Claimant was notified to report for an Investigation on February 2, 1994 concerning his responsibility for damage and personal injury resulting from the accident on January 12. The Hearing was conducted as scheduled and on February 18, 1994, Claimant was notified that he had been dismissed from service.

The Organization contends that Carrier failed to prove the Claimant's responsibility for the accident. The Organization argues that the mere fact of an accident does not establish Claimant's negligence. The Organization maintains that the clearance sign on the bridge was twisted and spray painted over and that Claimant reasonably relied on his prior experience driving the truck under the bridge while headed eastbound on Booth Street. Furthermore, the Organization maintains that the penalty of dismissal was excessive.

Carrier argues that it proved Claimant's responsibility by substantial evidence. Carrier contends that the clearance sign was visible and that, in any event, if Claimant was unaware of the exact clearance for the bridge, he should have proceeded more cautiously to avoid a potential accident. Carrier maintains that the penalty was appropriate in light of the seriousness of the accident and Claimant's prior record.

The Board reviewed the record carefully. We find that there is substantial evidence to support the finding made on the property that Claimant was responsible for the accident. Claimant admitted that it was his responsibility to ensure that there was sufficient clearance. He further admitted that if he was unable to read the clearance sign, he should have avoided the underpass or proceeded slowly and cautiously to ensure that he could avoid a collision. Thus, the evidence established that Claimant acted negligently either by failing to heed the clearance sign or by failing to exercise sufficient caution if the clearance sign was not visible or legible.

Accordingly, we consider the propriety of the penalty. The accident was a serious one. It caused approximately \$20,000.00 in damage to the truck and serious personal injury to the passenger in the truck. Claimant had been dismissed previously and had been reinstated on a leniency basis. In light of the seriousness of the incident and Claimant's prior record, we are unable to say that dismissal was an arbitrary, capricious or excessive penalty.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of December 1996.