

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34150
Docket No. SG-33771
00-3-97-3-240**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka & Santa Fe Railway (ATSF):

Claim on behalf of S. W. Kealey to be made whole for all compensation lost as a result of his suspension from service from February 14 to March 15, 1996, including all regular time, overtime and skill differential pay, and for his record to be cleared of any reference to this matter, account Carrier violated the current Signalmen’s Agreement, particularly Rule 41, when it did not provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline against him on the basis of unproven charges, in connection with an investigation held on February 13, 1996. Carrier’s File No. SIB 960410AA. General Chairman’s File No. 96-19-41. BRS File Case No. 10206-ATSF.”

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.

By letter dated January 8, 1996, the Claimant was notified to attend an Investigation concerning alleged violation of numerous Rules following the head-on collision of two track cars. The facts are that on December 26, 1995, the Claimant was involved in an accident whereby he observed "coming around a curve, . . . two headlights . . . and then I . . . tried to slam on my brakes and stop . . . and . . . the accident occurred." Following postponements, the Investigation was held on February 13, 1996. Subsequently, the Claimant was found guilty of failure to operate his track car at a safe speed in violation of numerous Rules and given discipline of 30 days suspension.

The on-property dispute involved both procedural issues and burden of proof. The Organization argued that the Claimant neither obtained a fair and impartial Investigation, nor was shown to be guilty of the charges. In particular, the Carrier failed to produce witnesses, dispatcher tapes, a copy of a Track Warrant of the Track Supervisor who collided with the Claimant and other fatal errors. As for the charges, the Organization maintains that they were not proven. Throughout the on-property dispute the Organization argued that the Track Warrant and information provided the Claimant was improper. The Carrier denied any improper procedural actions and held that its discipline was fully based on the facts developed.

The testimony confirms that on the morning of December 26, 1995, the Claimant was Eastbound with a properly issued Track Warrant giving him the right to occupy track between Mile Posts 55.5 and 26. He was unaware that another Track Warrant had also been issued to Track Supervisor McFadden to operate over the same territory Westbound. Both vehicles proceeded on the same rail toward each other until at around 9:00 A.M. at Mile Post 43.6 they collided.

The Board carefully studied the procedural issues and finds that they do not establish a procedural violation. Similarly, we reviewed the evidence of record and find that there is sufficient finding of guilt. The testimony of the Road Foreman is that the dual issued Track Warrants were proper. There is testimony, and the injury report issued by the Claimant confirms, that track conditions were icy. The Road Foreman's investigation along with that of the Roadmaster suggests that the Claimant had a total of 1200 feet of vision prior to the collision which occurred 500 feet from the probable point he would have first view.

This testimony is speculative as to where the two employees would have first vision due to the fact that their speed was unknown. Neither the Track Supervisor, nor the Claimant knew their exact speed. The Claimant believed he was going around 30 miles per

hour, but at the Investigation testified that "I really can't even tell." The question put to the Road Foreman on this point was in part: "How do you know where Mr. McFadden was when the view came into effect?" with an answer that "I don't."

The Organization contends in testimony that the Claimant had not used his full one-half range of vision when the accident occurred as he had 600 feet to stop and hit the McFadden vehicle after McFadden had jumped out and before he had time to stop at the one-half range. According to testimony, the Claimant was struck by the other vehicle while he was braking and within his stopping area.

The Board's full view of the evidence is that it is sufficient to prove the Claimant guilty of excessive speed under the full circumstances of the record. There is an admission by the Claimant that he failed to wear his seat belt in violation of Rule 54.2. We also find it important that the Claimant was never advised that there was another vehicle operating toward him on the same track.

For all of the above reasons, while the Claimant is guilty of the charges, the discipline is excessive (see Public Law Board No. 4244, Award 208). While the Carrier argues discipline is based upon the Claimant's past record, we find that under the circumstances and evidence of record, the Claimant's discipline is reduced to 15 days and he is to be made whole.

AWARD

Claim sustained in accordance with the Findings.

ORDER

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 19th day of June, 2000.