

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36325
Docket No. MW-33276
02-3-96-3-752**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The five (5) day suspension imposed upon Mr. D. S. King for alleged violation of Operating Rules 720 (Item No. 8) and 723 in connection with the road crossing accident near Mile Post 00C-370.6 on August 24, 1995 was without just and sufficient cause and on the basis of unproven charges [System File 11(2) (95)/12(95-1074) LNR].**
- 2. The discipline (letter of reprimand) imposed upon Mr. M. E. Rice for alleged failure to react to the impending danger of the speed and rail conditions which contributed to the road crossing accident near Mile Post 00C-370.6 on August 24, 1995 was without just and sufficient cause and on the basis of unproven charges [System File 11(3) (95)/12(95-1086)].**
- 3. The discipline (letter of reprimand) imposed upon Mr. J. C. Torbett for alleged failure to react to the impending danger of the speed and rail conditions which contributed to the road crossing accident near Mile Post 00C-370.6 on August 24, 1995 was without just and sufficient cause and on the basis of unproven charges [System File 11(4) (95)/12(95-1087)].**
- 4. As a consequence of the violation referred to in Part (1) above, Mr. D. S. King shall be compensated for all wage loss suffered during the five (5) day suspension and his record shall be cleared of the charges leveled against him.**

5. As a consequence of the violation referred to in Part (2) above, Mr. M. E. Rice's record shall be cleared of the letter of reprimand and all the charges leveled against him.
6. As a consequence of the violation referred to in Part (3) above, Mr. J. C. Torbett's record shall be cleared of the letter of reprimand and all the charges leveled against him."

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 August 24, 1995, the Claimants were in a hi-rail traveling on the Etowah Subdivision near Mile Post 00C-370.6. Claimant Foreman King was operating the hi-rail. Claimants Foreman Rice and Truck Driver Torbett were passengers.

King reduced the speed of the hi-rail as a result of a rain. The Claimants testified that there was grease on the track from a track lubricator.

The Claimants observed that a vehicle was approaching a road crossing. King attempted to stop before the crossing, but was unable to do so from his speed of approximately 20 m.p.h. A collision occurred with the highway vehicle striking the hi-rail. The collision resulted in damage to both vehicles and hospitalization of the highway vehicle's driver. The Claimants were not injured. The driver of the highway vehicle received a citation for failure to yield the right-of-way and failure to stop at the crossing.

After an Investigation, King received a five-day actual suspension for not having the hi-rail under control when he approached the crossing. Rice and Torbett received reprimands for failing to advise King to take extra precautions to control and stop the hi-rail.

Substantial evidence supports the Carrier's conclusion that King violated Operating Rules 720, Item 8 ("[o]n-track equipment . . . [s]peed must be further reduced . . . over crossings. . .") and 723 ("[o]n-track equipment must approach road crossings . . . prepared to stop short of the crossing. . ."). Substantial evidence shows that King was operating the hi-rail too fast for conditions. He failed to reduce speed prior to the crossing and was not prepared to stop short of the crossing. Under the circumstances, the five-day suspension was not arbitrary. King's claim is therefore denied.

However, substantial evidence fails to support the Carrier's determination that Rice and Torbett engaged in misconduct. They were passengers on the hi-rail and had no direct operating functions. The discipline imposed on Rice and Torbett shall be rescinded. The claims with respect to Rice and Torbett are sustained.

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 26th day of December 2002.