

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36630
Docket No. SG-36061
03-3-00-3-212

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

Claim on behalf of R. W. Walley, for removal of letter of reprimand issued by the Carrier following an investigation held on December 8, 1998, and for any reference to this matter to be removed from his record, account Carrier violated the current Signalmen's Agreement, particularly Rule 47, when it failed to provide the Claimant with a fair and impartial investigation and imposed discipline without meeting the burden of proving its charges against him. Carrier File No. K0699-5271. General Chairman's File No. BRS 9900147. BRS File Case No. 11094-KCS."

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.

This claim filed on February 4, 1999 protests the Carrier's issuance of a Letter of Reprimand to the Claimant on December 17, 1998, as a result of an Investigation conducted on December 8, 1998 in connection with the charge he violated Safety Rules in connection with an accident involving his truck on November 14, 1998. The Claimant resigned on March 5, 1999.

The record reveals that the Claimant was driving his truck to a call heading westbound on I-10 at Baton Rouge, Louisiana, at around 11:00 A.M. The road was wet, he had just passed a back-up caused by an accident, and he was accelerating to cross a bridge. The Claimant testified that he thought he was traveling about 50 miles per hour, but not at a constant speed, and after feeling a bump, his truck started to slide sideways. He lost control of the vehicle and it slid off the road, onto the median, missing a light post, flipping over and hitting a guard rail. The Investigating Officer sent to the scene by the Louisiana State Police Department cited the Claimant for Exceeding a Safe Speed Limit, noting in his report that the Claimant was accelerating at the time and stated that he was going 50-60 miles per hour when he lost control of the truck. Initially the Claimant reported that he had not sustained any injuries, but a few days later he felt sore and went to the doctor, received treatment for shoulder strain, and was restricted to light duty. He did not miss any work as a result of the accident, although his supervisor testified that the truck was basically beyond cost-effective repair. The Carrier took some pictures at the scene and of the vehicle during its investigation of the accident, checked the steering mechanism on the truck and found it not to be faulty, but did not perform other safety checks on the vehicle.

The Organization argues that the Carrier violated Rule 47 by failing to give the Claimant a fair and impartial Hearing because the charges were not precise and mentioned no Safety Rules, yet the Hearing Officer read three such Rules into the record and ultimately found the Claimant to have violated them, and there was prejudgment of the Claimant's guilt. The Organization contends that there were no witnesses to the accident, the Claimant testified that he was traveling a safe speed, and that his loss of control of the truck could have been caused by a hydroplane situation at a bump on the road. It asserts that the Carrier failed to prove any wrongdoing on the Claimant's part, and that the discipline should be removed from his file.

The Carrier argues that there is substantial evidence in the record to support the conclusion that the Claimant violated Safety Rules 1.1, 1.1.1 and 1.1.2 when he lost control of his vehicle causing damage to the truck and an injury to himself. The Carrier relies upon the fact that the investigating police officer at the scene charged the Claimant with Exceeding a Safe Speed Limit, after hearing the Claimant's version of what occurred and surveying the site, and notes that the penalty imposed was the mildest form of discipline possible. The Carrier contends that the claim is moot, based upon the Claimant's resignation from employment in March 1999, but rejected the Organization's offer on the property to withdraw the claim if the Carrier would remove the discipline, because the matter concerning the Claimant's injury had not been fully resolved.

A careful review of the record convinces the Board that the Organization failed to establish any violation of the Agreement in this case. Based upon a review of the transcript of the Investigation, and the exhibits, there exists substantial evidence that the Claimant's driving at what was found to be an excessive speed for the road conditions was, at least partially, a contributing factor to the accident. The Carrier's procedural issue concerning the mootness of the claim need not be decided by the Board, based upon our conclusion that the Organization failed to meet its burden of proving a violation. Accordingly, the claim is denied on its merits.

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 29th day of July 2003.