

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39606
Docket No. SG-39289
09-3-NRAB-00003-060168
(06-3-168)

The Third Division consisted of the regular members and in addition Referee Joan Parker when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Rail
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp. (Metra):

Claim on behalf of C. Neace, for him to be made whole for all lost wages and benefits with the discipline rescinded and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 53, when it failed to provide a fair and impartial investigation and then issued an excessive five-day work suspension against Claimant without meeting its burden of proving the charges in connection with an investigation held on March 30, 2005. Carrier’s File No. 11-13-488. General Chairman’s File No. 7-D-05 Neace. BRS File Case No. 13546-NIRC.”

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.

At the time this dispute arose, Claimant C. Neace was regularly assigned as a Vacation Relief Signal Maintainer on the Carrier's Milwaukee District. His date of hire was June 27, 1994.

By notice dated March 22, 2005, the Claimant was instructed to appear at a formal Investigation on March 30 the purpose of which was:

“ . . . to develop the facts, determine the cause and assess responsibility, if any, in connection with your alleged carelessness while driving company vehicle #91081 on March 21, 2005, allegedly striking another vehicle while making a turn on red off of Bartels Road onto Route 20 which sustained damage to other vehicle.”

The Claimant was charged with violating Safety Rules and General Procedures Rules, Rule 107.4.1 (Obeying Traffic Laws) Rule 107.5.1 (Operating a Vehicle Safely) and Employee Conduct Rule N, Paragraph No. 3, Item No. 1 (“Employees must not be: (1) Careless of the safety of themselves and others”).

By letter dated April 8, 2005, the Carrier notified the Claimant that he had been found guilty as charged and, consequently, had been assessed a five workday suspension. The Organization appealed, and the claim was processed in accordance with the Agreement. The matter was discussed in conference on November 29, 2005, but was not resolved. Thereafter, it was submitted to the Board for adjudication.

The Carrier contends that it met its burden of proof. On the day of the incident, March 21, 2005, shortly after 12:00 P.M., the Claimant called Signal Supervisor M. Tempinski to report that he had been involved in a vehicle accident. According to Tempinski, the Claimant related that he had “struck another car scratching the paint.” He told Tempinski that the accident occurred as he was making a turn on red, after stopping. Consistent with what he told Tempinski, the Claimant wrote the following statement in the Illinois Motorist Report on the day of

the incident: "I made a right hand turn on red and struck a westbound car in the right rear fender." The Carrier further emphasizes that following an interview with the Claimant, Metra Police Sergeant M. Mapes completed a Crash Report in which he wrote:

". . . Per Neace, he was driving Metra truck 91081 [southbound] on Bartel Rd. He made a right turn onto Lake St., to go west. In doing so the left front corner of the truck struck the right rear wheel area of veh. #2 [the car belonging to the other driver] causing damage to the area. There was no damage to his Metra vehicle.

Lake St. is a four lane undivided highway and Veh. #2 was [westbound] in the left lane at the time of the accident."

At the Hearing, the Claimant testified that as he made his right turn onto Lake Street, the other vehicle, which was also heading west, struck his Metra truck. He stated that to the east, there was a hill that sloped down toward Bartel Road, and when he stopped and looked prior to making his turn, there were no obstructions to his vision, "except for the hill."

The Carrier submits that the Claimant's testimony contradicted his prior statements as to how the accident occurred. Moreover when the Claimant was asked whether he made a wide turn as he swung onto Lake Street, he responded, "No. Well – no, I tried not to." The Carrier asserts that Claimant was not a credible witness.

In the Carrier's view, the Claimant did not drive safely. The traffic on Lake Street had the right-of-way. Therefore, it was the Claimant's responsibility to turn onto the road without incident. Instead, he caused more than \$500.00 worth of damage to the other vehicle, a 1990 Chevy Camaro. While the traffic ticket that the Claimant received for disobeying a traffic control signal was ultimately dropped, the Carrier contends that the ticket might have been dropped for a variety of reasons. Therefore, the disposition of the ticket should not determine the outcome of the disciplinary charges at issue herein.

The Organization contends that the Carrier failed to meet its burden of proving that the Claimant drove his truck unsafely. Additionally, the Organization

argues that the Carrier imposed an excessive and unwarranted penalty for a very minor traffic accident without taking into consideration that the Claimant had a clean driving record during his ten years of service. Moreover, a review of the cases of other employees involved in similar traffic incidents shows that the Carrier engaged in disparate treatment. In further support of its position, the Organization emphasizes that in reviewing several claims involving minor vehicular accidents on this property, Special Board of Adjustment No. 1122 in Cases 26, 37, 40, and 43 reduced or removed discipline, finding that the Carrier had imposed penalties that were unduly punitive and not related to the seriousness of the employee's infraction. The Organization asserts that the cited cases are fully applicable to the instant dispute and provide sound basis for overturning the discipline assessed the Claimant in the instant matter.

There is no doubt that the Claimant was involved in a vehicular accident and that he struck the second vehicle, as he initially reported to Supervisor Tempinksi, the local police, and Metra Police Sergeant Mapes. However, it is also undisputed that the incident was very minor. It appears that the Claimant stopped at a red light on Bartel Road, and as he proceeded to make a right turn onto Lake Street, a Chevy Camaro came over the hill to his east at unknown speed. The Claimant's left front bumper clipped the other vehicle's right rear wheel area. The collision did not cause any damage to Metra's truck and, apparently, only scratched the Chevy Camaro. While the Claimant did hit the other vehicle, the traffic ticket he was issued was dismissed, and there is no proof that he was driving recklessly or without due regard to traffic laws and the safety of other motorists and pedestrians.

Moreover, the Claimant had a clean driving record, and there was only one prior entry of discipline in his record, which was a four-day deferred suspension almost eight years earlier. This kind of record does not suggest that the Claimant is the kind of employee who routinely violates the Carrier's disciplinary Rules or disregards traffic regulations.

Special Board of Adjustment No. 1122, Case 40, held in pertinent part, as follows:

“. . . the concept of progressive discipline dictates that discipline should be commensurate with the employee's transgression. A minor incident involving negligible damage to a Company vehicle

does not indicate that this was the kind of flagrant misconduct that would justify a five-day suspension.

* * *

Each case must be judged on its own merits in terms of whether the application of the discipline policy was fair and reasonable considering the specific facts of the case. The Board cannot blindly defer to the Carrier in the application of the policy when it is readily apparent that the discipline does not fit the infraction.

That is particularly important when . . . the Carrier seeks to apply a 'one size fits all' policy to the broad category of vehicle accidents. By their very nature, vehicle accidents can range from trifling to catastrophic, and it is vital in each case to take into account the specific circumstances in order to determine the appropriate level of discipline. It is not consistent with the principles of progressive discipline to assess the same punishment for every accident, based strictly on the determination that the employee was to some extent responsible for what occurred."

Based upon the circumstances of this case, the Carrier abused its discretion in imposing a five-day suspension. Given the minor nature of the accident, as well as the Claimant's past record, the discipline should not have been more stringent than a written reprimand. Accordingly, the Board directs that the five day suspension be replaced with a written reprimand and that the Claimant be compensated at the appropriate contractual rate for the time he lost as a result of his suspension.

AWARD

Claim sustained in accordance with the Findings.

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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 1st day of April 2009.