

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39656
Docket No. SG-39149
09-3-NRAB-00003-050625
(05-3-625)**

The Third Division consisted of the regular members and in addition Referee Joyce M. Klein 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.:

Claim on behalf of J. F. Hoff, for payment of all lost wages, the discipline rescinded and any reference to this matter removed from the Claimant’s personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 53, when Carrier imposed the harsh and excessive discipline of a five-day suspension against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on October 29, 2004. Carrier’s File No. 11-13-474. General Chairman’s File No. 59 D 04. BRS File Case No. 13259-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.

The Claimant who was regularly assigned as a Signalman/Truck Driver on Gang 6 headquartered at Franklin Park, Illinois, on the Milwaukee District was driving a Carrier truck on October 20, 2004 that struck the mirror of a parked truck causing damage. Specifically, the Claimant was driving in the right lane eastbound on Grand Avenue which had two lanes in each direction with a parking lane. The Claimant testified that a vehicle was double-parked in the right lane, so he began to move the truck into the left lane. As he did, a landscaping truck "came out from behind me and sped up and was starting to cut me off going into my direction." The Claimant testified that he returned to the right lane and, in doing so, the mirror of the truck clipped the mirror of the vehicle double-parked in the right lane. According to the Claimant, he returned to the right lane to avoid being side-swiped.

Signalman Tillmon was a passenger in the truck and substantiated the Claimant's testimony.

The Claimant maintained clean personnel and driving records while working for the Carrier. He reported the incident promptly and in accordance with the Carrier's procedures.

The Carrier asserts that the Claimant violated Safety Rule 107.5, No. 1 which requires those operating a vehicle "to observe all conditions to prevent accidents and injuries to yourself and others," as well as Employee Conduct Rule N, paragraph No. 3, Item No. 2 which requires that employees must not be negligent. Based upon violations of these Rules, the Carrier assessed a five workday suspension.

The Organization asserts that the Carrier violated the Agreement when it did not afford the Claimant a fair and impartial Hearing in this matter. It contends that the accident was attributable to two other motorists, one who cut the Claimant off in traffic and one who double-parked his vehicle in the way of traffic. According to the Organization, the Claimant simply took defensive action to miss the vehicle that cut him off and avoid more serious damage to the Carrier's vehicle and to himself and his passenger. The Organization claims that under the extenuating circumstances, the discipline is excessive.

The Board carefully and thoroughly reviewed the record of the on-the-property Hearing and finds insufficient evidence of procedural deficiencies. Turning to the merits, the Claimant began to move out of the right lane of traffic to avoid a vehicle that was double-parked in that lane, and as he moved into the left lane, he became aware of another vehicle seeking to pass him in the left lane. In order to avoid a potential collision with the second vehicle, the Claimant returned to the right lane, hitting and causing damage to the

mirror of the double-parked vehicle. Although the Claimant's defensive actions most likely avoided a more serious collision, he nonetheless, by seeking to go around the double parked vehicle without first ensuring that there were no other vehicles in the left lane, created a situation that led to an accident. By doing so, he violated the Carrier's Safety Rule requiring attentiveness to avoid accidents or injuries as well as the General Rule prohibiting negligence. Accordingly, the Board finds that the Claimant was at fault.

Based on the unique circumstances of this case, the Board concludes that a written reprimand is more suited to the infraction. Accordingly, the Board directs that the Claimant be made whole for time lost as a result of his five-day suspension from service and that his personnel record be amended to reflect receipt of a written reprimand rather than a five-day suspension.

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 22nd day of April 2009.