

**Award No. 11556**  
**Docket No. TE-10155**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David Dolnick, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Spokane, Portland and Seattle Railway that:

1. Carrier improperly and unjustly suspended L. E. Holliday from work May 5, 1957 through May 14, 1957.

2. Carrier be required to compensate L. E. Holliday for all wages lost during this period.

**EMPLOYES' STATEMENT OF FACTS:** The agreements between the parties are available to your Board and by this reference are made a part hereof.

At the time cause for this claim arose, L. E. Holliday was a Division Lineman in the employ of this Carrier who, among other duties, was required to inspect the signal and communication lines in his territory.

On April 3, 1957 while travelling over his territory on a track motor car he saw another track motor car on the track near Mile Post T-36 and applied the brakes to the fullest extent. Due to oil and grease on the rails, the wheels slid and his motor car collided with the other motor car which was in charge of Lubricator Maintainer Joseph Toothman. The collision caused some damage to the motor car. Holliday sustained some personal injuries because of jumping off his motor car just prior to the collision.

Holliday lost no time because of his injuries; the extent of the injuries and the damage to the motor car are set forth in the transcript of the ensuing investigation a copy of which is attached hereto as O.R.T. Exhibit No. 1.

Investigation was held on April 11, 1957 conducted by Trainmaster W. W. Garrett. On April 24, 1957 Lineman Holliday was notified by the Superintendent of Communications and Signals, R. E. Blevins, that he was to be suspended for ten days starting May 5, 1957 (ORT Exhibit No. 2). This matter was appealed, by the General Chairman of the Organization, to General Manager E. H. Showalter on May 2, 1957 (ORT Exhibit No. 3), with a request that

motor car which was standing on the main track at or near Mile Post 36, resulting in considerable damage to both motor cars and injuries to claimant. Toothman was standing clear of his track car at the time and was not injured.

Respondent therefore requests that your Honorable Board deny this claim for time lost.

All data in support of the Respondent's position has been submitted to the Petitioner and made a part of the particular question here in dispute. The right to answer any data not previously submitted to the Respondent by the Petitioner is reserved by the Respondent.

(Exhibits not reproduced)

**OPINION OF BOARD:** On April 8, 1957 Carrier notified Claimant that a formal investigation would be held on April 11, 1957 "to develop facts and place responsibility for accident occurring April 3rd at or about 2:45 P.M. near MP T-36 between Oakbrook and Sinamox when a motor car operated by you struck motor car belonging to Lubricator Maintainer Joseph Toothman. Preliminary investigation indicates that you failed to observe safety rules Nos. 2346 and 2353 governing operation of a motor car." The investigation was held on April 11, as scheduled, and on April 24, 1957, Claimant was notified by Carrier's Superintendent of Communications and Signals as follows:

"Please be advised that you are to be suspended from service for 10 days for violation of Safety Rules Nos. 2346 and 2353, governing operation of motor car operated by you striking motor car operated by Joseph Toothman at MP T-36 on April 3, 1957.

The suspension is effective May 5, 1957, and you will be permitted to return to your regular assignment at 6 A.M. on May 15, 1957."

Safety rules 2346 and 2353 read as follows:

"2346. Operation of track cars on obscure curves, long trestles, or in tunnels must be properly protected by flag, unless the line is known to be clear of trains, and then must move at slow speed prepared to stop short of approaching track car or obstruction. Remember these cars do not set automatic block signals.

"2353. Track cars must be operated under Full Control, prepared to stop when approaching highway crossings and places where men are working on track and bridges, also when passing standing trains."

Claimant testified that he "was traveling about 20 miles per hour on a long curve;" that normally he would have been able to avoid colliding with Mr. Toothman's motor car, "but the rail was slick with lubricator grease and was unable to stop." The curve was approximately 1320 feet long. Claimant had track visibility of about 600 feet.

Claimant further testified that he had tested the brakes on every curve, as required, and he noted no defects. His motor car was loaded with heavy tools and equipment. When he was asked by the Trainmaster conducting the hearing, why he was unable to stop his motor car and avoid the collision he replied:

"The rail was covered with grease, Mr. Toothman and myself checked the rail after the collision and there was a full coating of grease covering the ball or top of the rail and had it not been for this factor I am certain I would have been able to stop short about three rails or more from the other motor car."

When Claimant observed Mr. Toothman's motor car, he put on the brakes on his motor car. All the wheels were locked but the speed of his motor car did not decrease because of the coating of grease on the rails. He jumped before the collision and sustained minor injuries. But he lost no time because of such injuries.

Joseph Toothman was a witness called by the Carrier. Mr. Toothman was a Lubricator Maintainer. He testified that the rail was covered with an abnormal amount of grease. When he was asked by the Trainmaster: "In your opinion what caused the grease on the rails?" he replied:

"There were two factors involved, the lubricators are set for the normal rate of speed for trains on the Oregon Trunk on this particular curve.

There is a lubricator located just west of the curve at MP T-35.90 and lubricator east of the curve at MP T-39.50. The last train was the east bound Union Pacific. This train exceeded the normal setting of the lubricators by approximately 20 miles per hour causing extra pressure and excessive lubrication, secondly the journals of the Union Pacific are heavily oiled at the Dalles which forms a film on the ball of the rail."

It was Mr. Toothman's responsibility to inspect the rails for excessive grease. On the day of the accident he inspected the lubricator prior to the time the Union Pacific passed eastward, and at that time the lubricator was working normally. There was considerably more grease on the rails after that train passed the area of the accident.

Carrier charged Claimant with violating Safety Rules 2346 and 2353. The burden of proof is upon the Carrier to show that the Claimant so violated these rules. There is nothing in the record to support Carrier's charge. Not only has Carrier failed to establish a violation by a preponderance of evidence, but the record of the investigation shows that Claimant used all reasonable care and caution in the operation of the motor car. The accident was caused by excessive grease on the rails which Claimant could not have known had existed. For these reasons Carrier was arbitrary and capricious in suspending Claimant for ten days.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

**AWARD**

Claim is sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1963.