

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The suspension of Carpenter E. M. Ott for 14 days for alleged violation of "a safety rule at Bridge 1.41, Cleveland, Ohio, May 24, 1963" was without just and sufficient cause and on the basis of unproven charges. (Carrier's File 30-5-90.)

(2) The charge "shall be stricken from the record" and "payment allowed for the assigned working hours actually lost while out of service of the Railroad", as per Rule 19 (f) of the controlling agreement.

OPINION OF BOARD: This is a discipline case.

Claimant Edgar Ott was charged with violation of Safety Rule 1004, reading as follows:

"BEFORE CROSSING OR FOULING TRACKS, look in both directions for trains, engines or cars, and do not cross ahead of moving trains, engines or cars, except at a safe distance."

After an investigation was held and evidence adduced by both sides, Ott was suspended for 14 days.

Claimants assert that Carrier failed to establish that Ott was guilty of violating the quoted rule. The record indicates to the contrary.

On page 42 of the Record we find testimony of Ott under questioning of G. F. Nigh, Div. Engineer. The substance of such testimony is that Ott looked in the direction of the car which subsequently hit him, then walked the length of a 22-foot plank and beyond approximately 4 feet where he was hit only after remaining in such spot "a minute or two" without again at any time looking up the track. We think such testimony clearly admits a violation of Rule 1004.

Mr. Ott was fortunate in that he was not seriously injured. Under the circumstances we do not believe the 14 day suspension was unreasonable.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 the Carrier has established by competent and sufficient evidence that Claimant Ott violated Safety Rule 1004.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of November 1966.