

 Award Number 17604

Docket Number SG-18220

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Don Gladden, Referee

---

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**THE TEXAS AND PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Texas and Pacific Railway Company:

On behalf of Signal Maintainer H. A. Nash for prompt reinstatement of his former position with full rights and pay for all time lost account Rio Grande Division Superintendent D. W. Schwarz, acting as judge of the proceedings (September 14 and 15, 1967), determined what questions and answers were and were not relevant, which parts of the proceedings would and would not appear in the transcript, and then on September 24, 1967, issued the following decision:

"You are hereby advised that your record has this date been assessed with Sixty (60) days actual suspension account your responsibility in connection with damage to T&P Motor car about 9:05 A.M., August 18, 1967, at east end of Trent siding, account collision with train, Extra 611 East. This suspension will be completed on November 23, 1967."

and furthermore, the transcript of the investigation shows that in order to prevent an inspection being made of the damaged motor car, it was sold to a scrap dealer and removed from Company property on Monday, August 21, 1967, and after this was done, formal charges were brought against Mr. Nash on August 22, 1967.

In view of the above, it is the position of the Employees that Mr. Nash was not afforded a fair and impartial investigation, and Carrier failed to prove he was in any way responsible for the damage to his motor car. (Carrier's File: B 315-16.)

**OPINION OF BOARD:** This is a discipline case and the Organization claims (1) that Claimant was not afforded a fair and impartial investigation, and (2) Carrier failed to prove he was in any way responsible for the damage to a motor car (the basis for a 60-day actual suspension assessed by the Carrier.)

While there are irregularities in connection with the investigation, there is nothing of sufficient import to conclude that the Claimant was not afforded a fair and impartial investigation.

We now turn our attention to whether the Carrier proved Claimant's responsibility for the damage done to the motor car. It is contended by the Carrier that Claimant did not take "every precaution" to assure that

his motor car would remain in the clear of passing trains. We, however, find no direct evidence that Claimant failed to exercise that degree of care that a reasonable and prudent fellow employee would have done under the same or similar circumstances. While the circumstances surrounding the collision coincide with and therefore render possible Claimant's responsibility for the damage to the motor car, this is not sufficient. They must exclude every other reasonable hypothesis. It is equally reasonable to conclude, in view of a showing that the brake was engaged after the accident and in the absence of a thorough examination of the damaged vehicle, that the damage could have resulted from mechanical failure.

We therefore find that the Carrier has failed to establish Claimant's responsibility for the damage to the motor car in question and direct that his record be cleared of the discipline assessed herein and the suspension be in all things set aside, and that he be compensated for the actual wage loss, if any, suffered by him.

**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 the Agreement was violated.

#### A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1969.