

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20664
Docket Number MS-20500

David P. Twomey, Referee

PARTIES TO DISPUTE: (Joel Myron
(George P. Baker, Richard C. Bond, and Jervis
(Langdon, Jr., Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on September 19, 1973 covering an unadjusted dispute between me and the Penn Central Transportation Company involving the question: illegal and discriminatory dismissal as trackman on June 7, 1972. Appeal denied third time in January, 1973 by Penn Central Transportation Company.

OPINION OF BOARD: Claimant held seniority as a trackman as of May 25, 1970. He was not a regularly assigned truck driver; however approximately once a month he was called upon to operate a truck for the Carrier. On April 6, a dump truck assigned to Claimant was involved in an accident with a Penn Central train causing \$300. damage to hand railings on each of two locomotives (total damage \$600.) and causing slight damage to the tailgate of the dump truck. The Claimant had been instructed to park the truck clear of the track. Contrary to these instructions, and after a substantial interval of time, the Claimant re-parked the truck as close as he could to the track without feeling that the truck, and himself in its cab, could be hit by a train (this was done so that scrap found on or near the tracks could be easily loaded onto the truck). The Claimant got out of the truck after moving it, to visually verify that he was clear of the track; it was the Claimant's judgement, based on this visual inspection, that the truck was clear of the track. This judgement proved to be poor judgement, and the accident occurred.

We find that the Claimant is solely responsible for the accident and the resulting property damage.

We disagree that the Claimant's conduct "could easily have created loss of life and/or extensive damage to Company property;" as was the view of the Chief Engineer, Maintenance of Way [Carrier's Exhibit E_7], in light of the deliberate precautions taken by the Claimant in the re-parking of the truck before the accident.

We find that assessing the ultimate discipline of dismissal in this case is arbitrary and excessive.

The discipline is reduced to a sixty (60) day actual suspension. The Claimant shall be paid for his net wage loss in accordance with Rule 34 (d). By net wage loss we mean that earnings in other employment may be deducted by the Carrier. The Claimant shall be reinstated with vacation and seniority rights unimpaired. The Claimant's record should note the modifications made by the Award.

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 consistent with the Opinion herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1975.