

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21705
Docket Number MW-21660

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company
(Pacific Lines)

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

(1) Because of the injury sustained on September 20, 1974, the Carrier should pay to Mr. M. C. Magnussen the benefits set forth in Article V (b) (3) of the February 10, 1971 Mediation Agreement (Carrier File C-7822 - HBH).

OPINION OF BOARD: Claimant in this dispute was injured when the truck he was driving, transporting rail, overturned on September 20, 1975. The issue in this dispute is whether Claimant is entitled to benefits provided by Article V, Paragraph (b), Sub-paragraphs (2) and (3) of the Off Track Vehicle Agreement. Carrier takes the position that Article V was never intended to include an employe whose assigned duty was to drive a truck.

The identical issue as that herein was presented to this Board in Award 20693 and subsequently in Awards 21567, 21613 and 21125. No evidence or argument has been presented in this dispute to persuade us that those awards are all palpably erroneous. Therefore, it is our conclusion that Claimant herein did come under the coverage of Article V even though his full time duty was to drive a truck and the accident occurred while he was engaged in that occupation. We include the reasoning set forth in our Awards 20693 and 21567 in this decision by reference and consider the matter to be resolved on the principle of stare decisis: no good cause has been shown to overturn the established precedents.

Carrier raises the question of offsets and subrogation in its presentation. It is understood that any payment Claimant receives as a result of a damage suit would be subject to Article V, (3) and (f). Further, under paragraph (b) (3) Carrier shall receive credit for any payments made as advances to Claimant and also as a result of any amounts Claimant has received under the Railroad Unemployment Insurance Act. It is concluded, therefore, that the Claim must be sustained, but that Carrier has a right to offsets and subrogation under Article V.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.

