

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22764  
Docket Number MW-22732

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Seaboard Coast Line Railroad Company

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

(1) The reprimand assessed to Crankhand J. W. Richey in and by a 'memorandum' dated April 18, 1977 by Division Engineer S. T. Watson was based on unproven and disproven charges and should be removed from Crankhand Richey's personal file /System File C-4 (13)-JWR/12-39 (77-20) J/."

OPINION OF BOARD: The Claimant was notified of an investigation concerning a charge that he violated Rule 587 of Carrier's Book of Safety Rules when he allowed the motor car which he was operating to be struck by Train 109.

Subsequent to the investigation, the Claimant was reprimanded for his responsibility in that he "...failed to keep proper lookout to the rear of the motor car."

Rule 587 requires that employees are to keep a sharp lookout for trains, other track cars, position of switches..."

In its Submission to this Board, the Carrier insists that the Claimant was negligent "...in his inherent responsibility to observe all safety precautions at all times while operating a motor car.", and it asserts that the testimony developed during the investigation showed that although the Apprentice Foreman was directly responsible (and was suspended for 60 days), this Employee must share in the responsibility.

In essence, the Carrier asserts that the fact that the Employee did not "keep a sharp lookout for trains" is evidenced by the very fact that the train in question struck the motor car and further, it urges that the letter of reprimand was quite lenient.

Our review of the record demonstrates that on the day in question, the Claimant was assigned to assist an Apprentice Foreman in inspecting certain track. The Apprentice Foreman advised the Claimant of the contents of the line-up and, accordingly, the

Claimant was aware of the departure time of Train 109.

The Claimant testified - and the Apprentice Foreman confirmed - that as they approached a certain signal he realized that the signal was green, which caused him to realize the possibility of a train approaching. As a result, the Employee asked his Foreman so as to be certain that it was safe to proceed. The Foreman assured the Claimant that "everything was O.K." and to disregard the green signal, based upon information assertedly received from the Dispatcher.

To the best of the Claimant's ability, he continued to be on the lookout for trains, although it is obvious that his prime attention was devoted to the specific job assigned to him, that of inspecting the track.

Certainly, the Carrier contemplated the Employee's 29 years of service with an unblemished record when it was content merely to issue a reprimand. However, in order to justify any disciplinary action, it is incumbent upon the Board to find that the record contains evidence upon which a finding of guilt can be based. In the record before us, we are unable to find that such a showing was made. Certainly, we do not for one moment dispute that railroad employees must adhere to reasonable safety rules, but here the Employee was attending to his basic chore and had raised the very question of proceeding (based upon the signal) and he was instructed to do so by the Foreman. Under the circumstances, we are inclined to sustain the claim.

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

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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 February 1980.