

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24458
Docket Number SG-24583

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern, Inc.:

On behalf of Assistant Signalman K. E. Soper, Everett, Washington, for payment of all time lost from January 10, 1981, through February 8, 1981, and any reference to investigation held December 9, 1980, be cleared from his personal record." (General Chairman file: SP-81-244. Carrier file: SI-81-5-21)

OPINION OF BOARD: By letter dated September 16, 1980 Claimant, assistant signalman K. E. Soper received notice to attend investigation on September 23, 1980 to ascertain facts and determine his responsibility, if any, in connection with company vehicle striking overhead bridge at about 1:30 PM on September 9, 1980 at Albany, Oregon. Mr. J. S. Seever, signal foreman, received notice to attend the same investigation. After postponements, the investigation was held on December 9, 1980 after which Claimant received by certified mail on January 2, 1981 assessment of discipline of thirty (30) days actual suspension from service for violation of Carrier Safety Rules, Form 15001, 535 (d), (e) and (f). Signal foreman Seever was acquitted of any responsibility of the incident at bar. Rules allegedly violated by Claimant read, in pertinent part:

"535 (d): Drivers must fasten safety belts and insist that any passengers do likewise.

(e): Drivers must exercise care to prevent accident and injury to driver and others by observing all conditions.

(f): Driver must comply with legal posted speeds, signs and signals, and make complete stops at all stop signs."

The record before the Board shows that Claimant was driving a vehicle, Boom Truck No. 11613, which was presumed to have a height of 10'1". In fact, however, the record shows that no one associated with this incident knew exactly how tall the truck was and Claimant's own impression that the height of the truck was "in the neighborhood of 10 feet" appeared to be a common consensus. In this respect it is not only the obligation of employees to avoid contravention of Safety Rules, but it is also the obligation of the Carrier to provide a safe work environment wherein the obedience of such Rules are to the advantage of both employee and the company. That the Carrier was remiss in carrying out this duty

is witnessed by the fact that the vehicle in question was not marked with a height sign. The Board also notes, in a review of the record before it, a laxity on the part of the Carrier in enforcing the Rules as this relates to seat belt usage. A Carrier cannot justifiably request the Board to apply stricto dicto interpretation to its Rules of Conduct when it is a question of assessing substantial evidence in a case when such application is contrary to Carrier's own past practices. The record, therefore, points to Carrier laxity in clearly marking the height of the vehicle in question which sustained damage; in the implementation of Rule 535(d) related to the use of seat belts; and in testing its employees on the meaning and significance of Safety Rules. None of this totally absolves Claimant of responsibility of the incident at bar: he could, on his own initiative, have gotten an accurate measurement of the height of the truck; he could have taken the initiative to have worn a seat belt while driving the truck; and he could have attempted to negotiate a different route than the underpass where the accident occurred in view of the cautionary signs and signals present. While culpable in part, Claimant is not culpable in a whole for the accident which occurred. Some of the responsibility for the accident which occurred on September 9, 1980 must be shared by the Carrier. Discipline is reduced to a 15 day suspension, and payment limited to actual loss, if any, during the remaining 15 days.

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

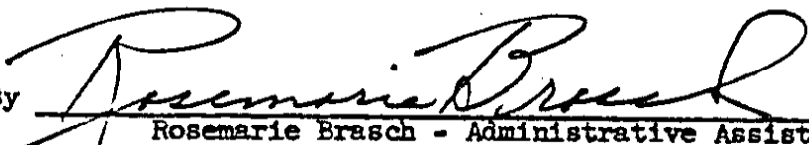
The discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of June 1983.

