

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25490
Docket Number MW-25513

M. David Vaughn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The five days of suspension imposed upon Foreman C. L. Jefferson for alleged responsibility "in connection with windshield damage to Signal Department truck #209 at approximately 1:00 A.M., November 9, 1982 at Bremen Ave., St. Louis, Mo." was without just cause and on the basis of unproven charges (System File TRRA 1982-18).

(2) The charge leveled against the claimant shall be cleared from his record and he shall be compensated for all wage loss suffered including overtime pay.

OPINION OF BOARD: Claimant C. L. Jefferson was employed by the Carrier as a Track Foreman. On November 9, 1982, Claimant was assigned as Foreman of System Gang No. 10. At approximately 1:00 A.M., Claimant instructed members of his gang to load fourteen cross-ties on Carrier's Truck No. 244, which was loaded with scrap material. When members of his gang asked if they should clean out the back end of the truck so that the cross-ties could be loaded in the usual manner, Claimant instructed them to load them across the tailgate of the truck instead. Loaded in this manner, the cross-ties protruded approximately three feet from each side of the tailgate. While the cross-ties were being transported for reloading onto Carrier's Truck No. 225, the protruding ties on the rear of Truck No. 244 struck and broke the windshield of a parked Signal Department truck.

After notice to Claimant, the Carrier conducted an investigatory hearing concerning the incident and, based on the results of that hearing, found Claimant guilty of negligence for his instruction to load the cross-ties improperly. Carrier assessed discipline of five (5) days suspension from service. The appeals from Claimant's suspension were denied, and the claim was brought before the Board.

The Organization argues initially that negligence is equivalent to poor judgment, and that Carrier failed to show that Claimant's judgment that "if we cleaned the truck off, we probably wouldn't have enough time to load all the ties" was in error. The Organization's argument in this regard must be rejected. The first concern of a Supervisor is the safe conduct of the operation under his supervision, which concern cannot be overridden by time constraints. Furthermore, the Organization does not deny Carrier's observation that the gang under Claimant's supervision had approximately one and one-half hours in which to complete this task.

The Organization further argues that Claimant is not responsible for the incident. In particular, it argues that Claimant was merely a passenger in Carrier's Truck No. 244, and that the driver of the truck bears some responsibility for the incident. The Board is not persuaded by the Organization's argument. Although Claimant did not personally perform each of the duties associated with the loading and reloading of the cross-ties, Claimant was, as the Supervisor in charge of the gang, responsible for seeing that it was carried out in a safe manner. The improper loading of the truck, at Claimant's express direction, created the potential for such an accident. That there may have been others involved in the incident does not cancel Claimant's involvement in or responsibility for the incident.

Having determined that the record contains substantial evidence of Claimant's negligence, the Board now turns to the question of the appropriateness of the penalty assessed. The Organization contends that the penalty was excessive, and that Carrier's reliance on Claimant's past work record in assessing the penalty was inappropriate, since Carrier's letter of November 29, 1982, in which it notified Claimant of his suspension for five days did not reference his past work record. The Board must reject this argument, since the Organization failed to point to any requirement that Carrier do so. The Organization does not deny that Claimant was previously reprimanded for negligence in connection with damage to another Carrier truck while he was Track Foreman. Under the circumstances, the Board is unable to conclude that the measure of discipline imposed was excessive or an abuse of discretion on the part of Carrier.

Accordingly, the claim must be, and it is, denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.

