

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25884
Docket Number CL-25525

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Northeast Illinois Regional Commuter Railroad
(Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9878) that:

1) That Carrier violated the Clerks' Rules Agreement, when it charged, held investigation and assessed discipline of five (5) days actual suspension to Employee R. J. Wachtler on February 11, 1983.

2) Carrier shall now be required to clear Employee R. J. Wachtler's record of all charges, investigation and subsequent discipline and compensate him for all lost time caused by such charges, investigation and discipline."

OPINION OF BOARD: On January 25, 1983 at approximately 8:00 AM, Claimant, driving a carrier vehicle, collided in to the rear end of a passenger vehicle on the Eisenhower Expressway. The collision started a chain reaction that involved three other vehicles in addition to Carrier's. A hearing was held and discipline of 5 days actual suspension was assessed against Claimant due to failure to follow Safety Rules 160, 163.

The Carrier contends that Claimant was traveling too fast, in violation of Rule 160, supported by the fact that he was issued a traffic ticket to that effect. The Carrier also contends that Claimant failed to check his equipment properly, as required by Rule 163, as evidenced by a worn and cracked brake pedal pad.

The Organization contends that Claimant was not driving fast, had checked his equipment including the brakes, and that the accident was caused by the brake pad falling off the pedal, causing Claimant's foot to slip, and thereby slowing his reaction time, which led to the collision.

There appears to be no reasonable way to determine if Claimant did or did not inspect his brakes, or if that inspection did or did not include an examination of the brake pedal pad. Evidence of the charge of driving too fast is circumstantial. Claimant, however, did hit the other vehicle from the rear. Other vehicles involved had stopped. Claimant did hit the brake pedal sufficiently hard to cause the pad to come off. If Claimant was traveling slow enough, there should have been time or a timely second pump at the unpadding brake pedal. Thus, the evidence is persuasive.

The remaining argument is whether five days suspension was appropriate. The Organization contends it is not, based largely on the fact that Claimant has eleven years seniority and has not committed a similar offense. The Board finds suspension appropriate.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.