

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(Chicago Union Station Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10047) that:

1. Carrier violated the effective Clerks' Agreement when, following an investigation held on January 7, 1985, it suspended Relief Parcel Agent - Tractor Operator Donald Walker from service for ten (10) working days without just cause;

2. Carrier shall now compensate Mr. Walker for all time lost as a result of this suspension from service and shall clear his record of the charges placed against him."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On December 28, 1984, the Carrier directed the following notice to the Claimant:

"You are hereby notified to attend investigation at the office of the General Baggage & Mail Agent, Chicago Union Station Company at 10:30 a.m., Monday, January 7, 1985, for the purpose of determining the facts and ascertaining your responsibility in connection with:

Alleged carelessness, recklessness and using poor judgement in operating Chicago Union Station Company baggage tractor # 5, resulting in damage to tractor on Friday, November 30, 1984.

Alleged failure to comply with the proper procedure and instructions in the safe, proper handling and operating of Chicago Union Station Company baggage tractor # 5.

Alleged failure to keep a safe distance from edge of track 22, unloading platform as directed in Safety Rule # 140 of the Chicago Union Station Co. Safety Rule Book.

At this investigation you may if you so desire, be accompanied by a duly accredited representative of BRAC/Clerks Organization, without expense to the Station Company.

You may produce witnesses in your own behalf, without expense to the Station Company, and you or your representative may cross-examine witnesses. You will be expected to be present throughout the entire investigation.

It is your responsibility to arrange for BRAC/Clerks representation and/or any witnesses you may desire to be present at this formal investigation."

Subsequent to the investigation, the Claimant was assessed the discipline now on appeal before the Board.

At the outset, the Board must reject the Organization's contention that the Claimant did not receive a fair and impartial hearing. While there is no doubt that the record is replete with leading questions, we note only one objection was registered on this basis and that was well into the hearing. Thus, it is difficult to invalidate the entire hearing on procedural grounds on the basis of such a limited protest.

With respect to the merits we cannot conclude that substantial evidence exists in the record to support the charge. There is very little evidence other than the fact an accident occurred to show that the Claimant was careless, failed to follow proper procedures or failed by his own design to keep a safe distance from the edge of Track #22. The fact that an accident occurs does not necessarily establish that the Claimant caused or contributed to it in any meaningful way.

Rather than showing that the Claimant was the cause of the accident, the evidence shows that defective equipment and lack of other safety installations were the culprits. The Claimant testified that he was pulling a loaded baggage truck down an incline adjacent to Track #22 when the coupling hook between the truck and tractor became disengaged, thereby causing the baggage truck to roll down hill free. The Claimant also stated that he put his tractor in reverse and stopped at an angle blocking the ramp to stop the potential runaway truck loaded with baggage. Evidently this is not an infrequent occurrence. Claimant walked back to the baggage car where he requested Mr. Fred Day to assist him in re-coupling the baggage car. As he attempted to pull the load away, his tractor bucked or reared and the impact of the front end coming down forced the rear wheel off the platform which has no guard rail.

This testimony did not stand alone. Fred Day, also an employee in the area, stated he assisted the Claimant in reconnecting the disconnected load. He did not see the tractor jump. But he did hear it. He also stated it is necessary to drive "kind of close to the edge" because the baggage trucks often become unhooked and by being close to the edge you can stop--as the Claimant did--the load from running away down the ramp.

Even more telling is the testimony of the Claimant's Supervisor. When asked if it was possible that the tractor "jumped" he stated flatly "it's been happening." When asked if it was a common occurrence he said "well we've been having quite a few of them jump." He also stated:

"Well, I have been down there 7 years now working and I have seen tractors where someone had gotten on them, tried to give them the gas and seen them buck up two or three feet off the ground, so I think anything is possible when you get one that jumps like that."

The only evidence to counter this was (1) a mechanical inspection after the incident which showed no abnormalities and (2) questions concerning the direction he was going when he accelerated.

Regarding the mechanical inspection, we note the following un rebutted testimony of the Claimant:

"Q. Now you indicated as well as other witnesses that the tractor has a tendency to jump?

A. Yes.

Q. Has this been reported?

A. Yes numerous times.

Q. What happened?

A. Nothing. Take the tractor to the shop, they say it's okay, you bring it back, within the next 15 or 20 minutes you get up on the tractor to go meet a train, get up on the tractor, step down on the accelerator (sic) to pull off and the thing jumps like a horse.

Q. And nothing is done?

A. Not that I know about, and my supervisor, Ernie Hicks at that time can back this story up and so can Fred Day. And any other baggage employee."

In view of this testimony, the testimony of Mr. Day and the Supervisor, the inspection can't be viewed as conclusive or probative.

Regarding the direction of the Claimant's travel, this evidence is insufficient to overcome all the evidence which strongly suggests that the Claimant was doing his best to remedy a bad situation. He got his tractor in an awkward position in the first place because a wagon--as sometimes they do--became unhooked and he was attempting to stop it from rolling away uncontrolled. After this the tractor jumped violently making it believable that it was this force which caused it to fall over the edge of the unprotected ramp.

In view of the foregoing, the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.