

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

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation - Amtrak
(Northeast Corridor)

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

(1) The thirty (30) days of suspension imposed upon Repairman Richard Driver for alleged failure 'to take necessary precautions to prevent' accident on October 28, 1983 'while driving a company vehicle AA23430 in the parking lot at Bryn Mawr Station' was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-746D).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

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.

This claim arose subsequent to an investigation that found the Claimant guilty of the following charge:

"In that on October 28, 1983 at approximately 9:00 a.m. while driving a company vehicle AA23430 in the parking lot at Bryn Mawr Station, you did involve this vehicle in a collision with a catenary guide wire, causing excessive damage to this vehicle and causing this vehicle to be out of service for repairs. You are charged with failing to take necessary precautions to prevent this accident from happening."

The Organization essentially contends that the Claimant swerved the vehicle he was driving to avoid striking a Ms. Darleen Jones, who was in the vicinity of the Claimant's vehicle. It contends that the Claimant's evasive action placed his vehicle in a position so that the sun's glare blinded him, causing him to then strike the guide wire, damaging his vehicle.

The Organization also submits that the Trial Officer "badgered" Ms. Jones at the hearing and in essence, because of the manner in which the hearing was conducted, the Claimant was deprived of his due process rights.

Turning first to the conduct of those proceedings, the Organization's concerns and contentions with respect to the Trial Officer's questioning of Ms. Jones are not without merit. While the Trial Officer may have had some concern as to whether or not witnesses had been rehearsed, this concern, if legitimate at all, should also have been applied to the Carrier's witnesses. We also basically agree that the Hearing Officer roamed about on matters that were not relevant to the charges. For example, there was considerable questioning as to how and where the Claimant had met Ms. Jones. Nonetheless, we do not find that the Hearing Officer's conduct served to prejudice the Claimant's rights. Clearly, as evidenced by the trial transcript, the Organization with great skill and vigor, brought forward and pursued the relevant points with respect to the incident. Essentially, the proceeding was an overly lengthy trial that, at times, pursued issues not relevant, but was not one that was unfair.

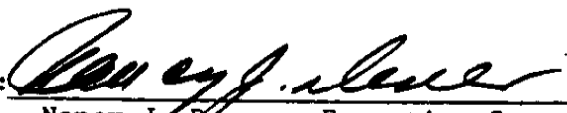
Turning to the merits, the evidence reveals that the sun's glare may likely have contributed to the accident. However, it was also established that the weather conditions were dry and clear. It is not an unreasonable requirement that drivers condition the manner in which they operate their vehicle in relation to the weather, traffic (including pedestrian) and driving conditions. The Carrier's conclusion that the Claimant did not take proper precautions while driving his vehicle is not unreasonable on the basis of the evidence properly before us. Accordingly, absent other factors that may be properly considered by this Board, we will not disturb the penalty assessed by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.