

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Maintenance of Way Employees
STATEMENT OF CLAIM: (
(The Denver and Rio Grande Western Railroad Company

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

(1) The discipline imposed upon Track Inspector B. Espinoza for alleged responsibility in connection with alleged head-on collision between motor cars, resulting in damage to motor cars and personal injuries, on August 1, 1988 was arbitrary, capricious, on the basis of unproven and disproved charges and in violation of the Agreement (System File D-88-19/MW-15-88).

(2) The Claimant shall be returned to service with seniority and all other rights unimpaired and shall be compensated for wage loss suffered in accordance with Rule 28."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The Claimant, a Track Patrolman, was operating an on-track motor car eastward between Range and Bond, Montana. While doing so, the Claimant states that he was traveling slowly enough to inspect track. A Signal Maintainer was operating a motor car westward on the same track. At Mile Post 145.5, the two motor cars collided, resulting in the destruction of one motor car and severe damage to the other car.

Based on the incident, the Claimant was subject to an investigative Hearing, following which he was dismissed from service for his "responsibility" for the collision. The Carrier unilaterally rescinded the dismissal eight months later, restoring the Claimant to duty as a Section Laborer without backpay. Intervening offers of leniency reinstatement based on no further progression of the Claim were not accepted and are of no consequence to the merits of the Claim before the Board. The Claim is for restoration to service with full backpay.

The record indicates that the Claimant did not see the oncoming car until just before the point of impact, while the operator of the other car observed the Claimant's car in sufficient time to apply his brakes. The Organization contends, however, that the Claimant was at work inspecting track, that the rails may have been greased and therefore slippery, and that the track did not provide an extended view. On these bases, the Organization argues that the occurrence of the collision was not the Claimant's responsibility.

The Board finds that some responsibility must rest with the Claimant, based on his failure to be fully alert as to an oncoming car. The Carrier recognized that dismissal was inappropriate in that it unilaterally restored the Claimant during the claim handling procedure. The resulting penalty was, in the Board's view, unduly harsh. The Award will direct that the disciplinary suspension be reduced to 30 days, with the Claimant to be granted lost straight-time pay beyond such 30 days. The Board will not, however, question the Carrier's judgment in removing the Claimant from his Track Patrolman position.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.