

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former Seaboard Coastline
(Railroad Company)

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

(1) The discipline assessed Bridgeman C. E. Gowen, a letter of reprimand, for his alleged violation of CSX's Operating Rule 50 in connection with an incident at the Trout River Bridge in Jacksonville, Florida on August 1, 1989, was arbitrary, capricious, based on unproven charges and in violation of the Agreement [System File 89-58/12(89-873) SSY].

(2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be compensated for any monetary loss due to the investigation which was held in connection with the incident on August 1, 1989 and his record shall be cleared of all charges with regard to this instance."

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.

On the date of the incident at issue Claimant was regularly assigned as a Relief Bridgetender at the Trout River Bridge on the 2:00 P.M. to 10:00 P.M. shift. On August 1, 1989, at approximately 7:00 P.M., a severe thunderstorm passed over the Trout River Bridge. Also at that time, a pleasure craft piloted by Mr. Grady Braddock arrived and was waiting to have the bridge raised. Mr. Braddock elected to wait about 30 minutes before blowing the horn on his boat to alert the Claimant. After Mr. Braddock blew his horn, the Claimant raised the bridge.

In a letter dated August 9, 1989, Claimant was notified as follows:

"You are hereby charged with violation of CSX
Transportation Operating Rules as follows:

Rule 501 - Civil and courteous behavior is required of all employees in their dealings with customers, fellow employees and the public. Boisterous, profane, or vulgar language is prohibited.

Rule 502 - Employees must devote themselves exclusively to the Company's service while on duty, rendering every assistance in their power in carrying out the rules and special instructions."

These charges are the result of an incident which took place on August 1, 1989 at 7:00 P.M. at the Trout River Drawbridge in Jacksonville, Florida while you were working as Bridge Tender. This incident involved a private boat traveling on the Trout River which needed to pass the bridge on which you were working."

A Hearing was held on August 18, 1989, after which the Carrier issued Claimant a letter of reprimand dated September 6, 1989. The discipline was appealed up to and including the Carrier's highest appellate officer.

Because of the nature of Claimant's position, the only witnesses to the alleged incident are Claimant and Mr. Braddock. At the investigation, Mr. Braddock testified that the Claimant refused to come out into a light rain, but relented after a minute or so and then opened the bridge at a studiously slow pace. In addition, Claimant immediately turned his back on the boat as it passed through and demonstrated an "attitude" Mr. Braddock found offensive. He also testified that on the day in question it took Claimant no longer to open the bridge than normally.

The Claimant testified that when Braddock's boat initially approached the bridge there was still some thunder and lightning with the rain storm. He said he saw Mr. Braddock's boat wait under the adjacent highway bridge for the storm to abate. Claimant testified that after about half an hour Braddock left the highway bridge and blew his horn for Claimant to open the railroad bridge. Claimant said he told Braddock that he was reluctant to venture out even then because of the possibility of lightning, but he nevertheless opened the bridge right after Braddock sounded his boat horn. The Claimant also testified that he turns his back on boats and watches them from the other side of the bridge because he has been "verbally abused because they think [he is] standing there looking at their girl friends and stuff." Claimant also stated that some boat passengers had directed racial slurs toward him, so he prefers to watch boats pass from the other side of the bridge.

It has been a long-standing practice on this and other Boards that in matters of credibility, the Board is extremely reluctant to substitute its judgment for that of Carrier. In the instant case, however, even the testimony of the Carrier's witness supports Claimant's description of what happened on the night in question. Mr. Braddock testified that Claimant took no longer to open the bridge on August 1, 1989, than on other occasions when Braddock had traveled the Trout River. He testified further that "just a few seconds" after Claimant said something about not coming out, he came out of the guardhouse and opened the bridge. The sum of Braddock's complaint appears to be that he believed Claimant did not wish to come out in the rain, and that Claimant turned his back to the boat once the bridge was opened.

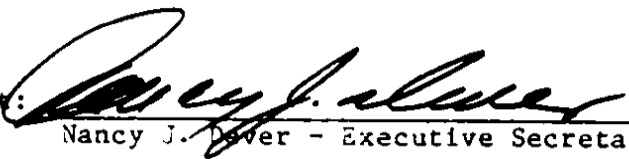
In short, there is no evidence on the record before us to suggest that Claimant acted in an abnormal fashion with respect to raising the bridge for Mr. Braddock's boat. Carrier has failed to show by clear and convincing evidence that any violation occurred. See Third Division Award 22008 on this property. Accordingly, we find no basis for even the minimal discipline assessed by Carrier in this case.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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