

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32607
Docket No. MW-33773
98-3-97-3-246

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company - C&EI)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The five (5) day suspension imposed upon Foreman G. L. Cox for alleged responsibility in connection with a rail/highway grade crossing accident at Locust Street, Mile Post 266.9, CE&I Subdivision, Fort Branch, Indiana on January 21, 1996 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement [System File 96185.CT/12(96-500) CEI].
- (2) As a consequence of the aforesaid violation, the Claimant's record shall be cleared of the charges 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

On February 12, 1996 the Claimant was advised to attend an Investigation to determine facts and place responsibility, if any, in connection with an accident involving CSXT Vehicle 45856 and an auto driven by a woman attempting a grade crossing at MP 266.9 at Fort Branch, Indiana. The accident occurred at approximately 2:55 P.M. on January 21, 1996. After an Investigation was held on February 23, 1996 the Claimant was advised that he had been found responsible for the incident and that he was guilty of having violated Rule 723. The Claimant was assessed a five day actual suspension.

A review of the procedural objections raised by the Organization in this case fails to persuade the Board that the claim should not be ruled on in accordance with its merits. Such procedural objections are dismissed accordingly.

Rule 723 states the following, in pertinent part:

“Track equipment must approach crossings at grade prepared to stop short of crossing. The equipment must not proceed over the crossing until the way is known to be clear. If necessary, highway traffic must be stopped by a flagman.”

A review of the police report which was filed after the accident occurred leads the Board to the conclusion that the automobile attempting to cross at MP 266.9 was struck by CSXT Vehicle 45856 which was being driven by the Claimant. At the Investigation the Claimant testified to various matters, but he did not disagree with the police report which stated which vehicle struck which. Nor did the Claimant disagree that the police report did not say that the outside party was at fault when the accident occurred.

On the basis of substantial evidence found in the record before it the Board can reach no other conclusion but that a violation of Carrier's Rule 723 took place when the vehicle driven by the Claimant struck another vehicle at the Locust Street grade crossing in Ft. Branch, Indiana. The claim cannot, therefore, be sustained.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 22nd day of May 1998.