

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 38370  
Docket No. MW-39154  
08-3-NRAB-00003-050644  
(05-3-644)

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

(Brotherhood of Maintenance of Way Employees Division –  
( IBT Rail Conference

**PARTIES TO DISPUTE:** (

(Soo Line Railroad Company

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal by decision dated November 1, 2004) imposed upon Ms. S. Sattler on charges of alleged violation of Company Safety Rules 559e, 559f, 564, 572 and General Code of Operating Rules 1.1.2 and 1.19 in connection with alleged inattentive operation of Company vehicle on September 23, 2004 which resulted in injuries and damage to Company property and third party property and on charges of alleged violation of General Code of Operating Rule 1.15 in connection with alleged failure to protect her assignment by being absent on September 30, 2004 and October 4, 2004 was arbitrary, capricious, without just and sufficient cause and in violation of the Agreement (System File D-04-390-003/8-00471).
- (2) As a consequence of the violation referred to in Part (1) above, Ms. S. Sattler shall receive the remedy prescribed by the parties in Rule 20 (g).”

**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 September 23, 2004, the Claimant, a Laborer with six years of service, was operating a company truck when she went through a red light and collided with another vehicle in the intersection. A coworker, who was a passenger in the Claimant's truck, was injured to the extent of suffering a stiff and sore neck and back. He did not obtain medical treatment. The driver of the other vehicle was treated in the emergency room of a local hospital. The company vehicle was damaged in the amount of approximately \$1,000, and the other vehicle also sustained some damage. The results of a drug and alcohol test taken by the Claimant after the accident were negative. The Claimant was instructed to report for work on Thursday, September 30, 2004, but did not report or call in. She also missed work on Monday, October 4, but, according to her testimony, she called off for that day. The police officer called to the scene issued the Claimant a traffic citation in connection with the accident.

The Claimant presented two doctor's notes with regard to her absences. One note was dated September 30, 2004 and said "2nd to medical illness off work 9/30/04" but did not give the specific nature of the illness. The second note was dated October 7, 2004 and stated, "Above patient was seen & evaluated today for medical problem. Unable to work 10/4 - 10/7/04 due to medical problem." The Claimant testified that she was absent both days because of the flu. The Track Maintenance Supervisor testified that on July 26, 2004, he spoke to the Claimant

because since the prior spring she had missed more than 20 percent of the hours she was expected to be on duty.

A formal Investigation was held on October 11 on charges of inattentive operation of a company vehicle on September 23, 2004, resulting in injuries and in damage to company and third party property in violation of various Safety and General Code of Operating Rules. The Claimant was also charged with failure to protect her assignment on September 30, and October 4, 2004, by being absent from duty on those days. By letter dated November 1, 2004, the Carrier notified the Claimant that testimony at the Investigation clearly established that she failed to safely operate a company vehicle, resulting in injury to a coworker and the driver of the second vehicle and damage to both vehicles involved in the collision. The second charge was also established, the letter stated, in that the transcript showed that she was "absent without authorization and thus failed to protect [her] assignment." The letter concluded, "Upon review of your past personal work history and as a result of your actions which continue to pose a significant safety risk to yourself, those you work with and the Public, effective upon receipt of this letter your services with Canadian Pacific Railway are no longer required."

The work record of the Claimant, who was hired as a Section Laborer on August 17, 1998, included informal coaching for tardiness on August 23, 1999; a PAP for a safety violation resulting in injury to herself on May 1, 2002; a five day suspension for her responsibility in regard to a collision between a ballast regulator and a tamper on November 13, 2002, a cardinal Rule violation; and informal coaching for absenteeism on July 26, 2004.

The Organization contends that the discipline assessed was "arbitrary, capricious, and heavy handed, and also unsubstantiated." It also takes exception to the Carrier's reliance on the Claimant's past work history in assessing the degree of discipline. It argues that the discipline imposed was greater than in similar cases where a suspension or disqualification from operating a company vehicle was the discipline imposed. The Organization asserts that it was improper for the Carrier to call the Claimant's coworker as a witness instead of citing him as a principal in the Investigation because the coworker and the Claimant were acting as a crew at the time of the accident. The Organization suggests that the coworker delayed

warning the Claimant that the light was red in the intersection that their vehicle was approaching.

The Organization contends that the proceeding was procedurally defective because the Service Area Manager and not the Hearing Officer rendered a decision in the case, although the Service Area Manager is the same Carrier official who preferred the charges against her. It also argues that the mere fact that an accident occurred does not prove that the Claimant was negligent or that she violated the Rules. With regard to the charges based on the Claimant's absences on September 30, and October 4, 2004, the Organization argues that the Claimant's absence on September 30 was of no significance because, according to the transcript, the Supervisor told her to report for work the following month, which was Monday, October 4. Further, the Organization contends, it is basic that personal injury or illness is a justifiable cause for absence, and the Carrier does not dispute that the Claimant was ill on October 4 and called to report her absence. The Organization argues that there is no way to separate the alleged attendance infractions from the accident as the basis for the Claimant's discipline and that the Claimant's dismissal must therefore be set aside and she be granted a remedy in accordance with Rule 20(g).

The Board finds substantial evidence to support the dismissal of the Claimant on the charges here in issue in light of her entire employment record with the Carrier and the fact that she is not a long-service employee. This was the Claimant's second serious accident where she was at fault involving the operation of company equipment in less than two years. Then, only one week after the latest accident, and after recently being counseled about excessive absenteeism, she was absent without calling in and without a credible explanation for her absence. The Board concludes that, taking into consideration the high degree of care the law imposes upon carriers in the operation of their property and the importance of having employees who feel a responsibility to fulfill their attendance obligations, the Claimant's latest safety violations together with her indifference to her attendance obligations could reasonably be construed by management, in light of the Claimant's total work record, as justifying dismissal.

The Board finds no impropriety on the Carrier's part in taking into consideration the Claimant's past work history in assessing discipline for her present violations even though there was no reference to the Claimant's past work record in the initial charges. Length of service and disciplinary record are commonly taken into account in determining the appropriate measure of discipline for a Rules violation. The past violations were not relitigated so as to require reference to them in the Notice of Investigation.

The evidence does not establish that the Claimant was given more severe discipline than other employees in similar circumstances. The one specific case relied on in the record involved an employee without any prior safety violation of record and who was not also charged with attendance infractions.

The evidence does not support the Organization's contention that the coworker who was in the vehicle at the time of the accident was improperly called as a witness and should have been cited as a principal. The evidence shows that the Claimant was driving the company truck and that the coworker did holler twice that the light was red when he realized that the Claimant was not going to stop. The Board perceives no error on the Carrier's part in not citing the coworker as a principal. Nor does the Organization explain why the Carrier would not have been able to call the coworker as a witness even if he had been charged as a principal. For example, the Claimant is a principal and was called as a witness. The Claimant's own testimony shows that she was negligent in going through a red light.

The Board finds ample evidence that the Claimant was guilty of all charges against her. Contrary to the Organization's contention, the Carrier does dispute whether the Claimant was ill on October 4, 2004. The Carrier correctly notes that although the Claimant claimed to be ill with the flu, neither doctor's note mentioned that the Claimant had the flu. Nor is the flu the kind of illness that someone would not want to reveal for privacy reasons if, in fact, one had that illness.

The Organization's contention that the Claimant was not required to report for work on September 30 because her Supervisor told her to report for work the following month is not supported by the evidence as a whole. The Claimant herself testified that on Wednesday, September 29, her Supervisor told her to report for

duty on Thursday, September 30. She also testified that she told her coworker the evening of September 29 that she was going to report for work on September 30.

The Organization's argument that the Investigation was procedurally defective because the same management official who preferred charges against the Claimant rendered the decision in the case instead of the Hearing Officer was not made on the property and will not be considered by the Board.

**AWARD**

Claim denied.

**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 20th day of November 2007.