

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40447
Docket No. SG-39668
09-3-NRAB-00003-060494
(06-3-94)

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp. (Metra):

Claim on behalf of R. W. Sorenson, for the discipline issued on October 3, 2005, to be rescinded with any reference to this matter removed from his personal record and otherwise made whole for any losses sustained, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it issued the excessive discipline of a three-day deferred suspension against the Claimant without providing a fair and impartial investigation and without meeting its burden of proof in connection with an investigation held on September 23, 2005. Carrier's File No. 11-13-514. General Chairman's File No. 11-D-05. BRS File Case No. 13619-NIRC.”

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 May 6, 2005, the Carrier directed the Claimant to report for a formal Investigation on May 13 that was mutually postponed and held on September 23 concerning the following charge:

“You are hereby instructed to attend a formal investigation which will be held on Friday, May 13, 2005 at 11:00 p.m. at the Wire Shop, 8402 W. 183rd Street, Tinley Park, IL. The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, with your alleged failure to properly operate a Capital Signal Department trencher/plow on Thursday, May 5, 2005. While operating the trencher you allegedly struck Hyrail Vehicle #LO859 causing damage to left front fender and hood. Therefore, you are hereby charged with alleged violations of Metra Employee Conduct Rule ‘N,’ Paragraph #3, Item #2. Your work record, copy of which is attached, will be reviewed at this investigation.”

The Rule in dispute is Metra Employee Conduct Rule “N,” Paragraph No. 3, Item No. 2, which states the following:

“Employees must not be:

2.) Negligent.”

On October 3, 2005, the Claimant was notified that he had been found guilty as charged and was assessed a three work days’ deferred suspension.

It is the position of the Organization that there is nothing in the record which demonstrated that the Claimant was negligent. Instead, it shows that he was involved in an unavoidable accident wherein he had no control over the ballast conditions that caused the plow to slide and hit the truck. Based upon those conditions, and the fact that the Claimant had a very good work record, it argued

that the assessed discipline was unwarranted. It concluded by requesting that the discipline be set aside and the claim be sustained as presented.

It is the Carrier's position that the accident could have been avoided if either the hyrail vehicle had been moved farther from the area where the plow was being operated, or the trencher had been moved from the main line to the siding at a point further away from the truck. It points out that the Claimant was asked during the Investigation if he could have moved the trencher/plow from the main track to the siding track at a different location and he responded by stating "Yes." It further argued that the Claimant could also have requested the BMW employee to move the truck before he started using the trencher if he did not believe that he had enough area to work in. It concluded by stating that the accident was avoidable and asked that the discipline not be disturbed.

The Board thoroughly reviewed the transcript and record evidence which substantiates that on the date in question, the Claimant's crew was assigned to install cable between the main line and siding between Mile Pole 35.84 and Mile Pole 36.06 on the Southwest Service. The main line and siding are at different elevations (a difference of about two feet). The Claimant was operating a cable plow (trencher/plow) leveling out ballast to prepare the area. As he crossed over from the main line to the siding to get in position to plow ballast off of the siding, the plow started to slide on the ballast. The plow at the back of the machine swung and struck Hyrail Vehicle No. LO859 which was parked on the side. The hood and left front fender of the truck were damaged as a result. It is clear that the accident could have been avoided by either moving the truck or having crossed the track at a different location with the trencher. The record is clear that the Carrier met its burden of proof that the Claimant was guilty as charged.

The only issue remaining is whether the discipline assessed was proper. At the time of the incident the Claimant had 37 plus years of seniority with only two minor offenses on his record. Therefore, the Board finds and holds that the discipline was excessive. It will be reduced to a Letter of Reprimand.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 14th day of May 2010.