

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40572
Docket No. SG-40321
10-3-NRAB-00003-080113**

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.:

Claim on behalf of J. K. Bird, for any reference to this matter removed from his personal record and to otherwise be made whole, as required by Rule 54 - Exoneration, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it imposed a three-day deferred suspension against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on September 21, 2006. Carrier's File No. 11-7-583. General Chairman's File No. 20-D-06 BIRD. BRS File Case No. 13865-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 June 19, 2006, the Carrier directed the Claimant to report for a formal Investigation on June 23, 2006, that was mutually postponed and held on September 21, 2006, concerning the following charge:

“ . . . The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, when you allegedly struck the fence gate at the 179th Street Yard while pulling the trailer with Vehicle #90906 on Thursday, June 15, 2006. Therefore you are hereby charged with alleged violation of Metra Employee Conduct Rule ‘N’, #1, and Metra Safety Rules 107.5, #1 and #107.6, #2 and #3. . . .”

Metra Employee Conduct Rule N, No. 1 states:

“Employees must not be:

1.) Careless of the safety of themselves and others.”

Metra Safety Rule 107.5 (Operating a Vehicle Safely), No. 1 states:

“Follow these requirements when operating a vehicle:

1.) Observe all conditions to prevent accidents and injuries to yourself and others.”

Metra Safety Rule 107.6 (Driving Defensively), No. 2 and No. 3 states:

“Follow these requirements for driving defensively when operating a vehicle:

- 2.) Pay attention to the long view as well as the short view. Look ahead 15 seconds so that you can identify potential hazards well in advance.
- 3.) Check your mirrors every 5 to 8 seconds to keep aware of the constantly changing conditions around you.”

On September 26, 2006, the Claimant was notified that he had been found guilty as charged and the Carrier assessed a three workdays deferred suspension that was placed on his personal record.

It is the position of the Organization that there is nothing in the record which demonstrated that the Claimant was negligent, but instead it shows that he was involved in an unavoidable accident. Based upon those conditions and the fact that the Claimant had a very good work record, it argued that the 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 record shows that the Claimant told a Metra Officer that the trailer his truck was pulling struck the gate. At the Hearing, the Claimant testified that he passed the fence gate to make a turn when leaving the 179th Street Yard and cleared the mirrors on the truck. When he turned, he could not see the gate because it was in his blind spot. Nonetheless, because the truck's mirrors cleared on the right-hand side, he proceeded, because he assumed the trailer would clear. The Carrier argued that his incorrect assumption resulted in damage to the main fence gate and post. It points out that the Claimant admitted his guilt when he testified “. . . I don't think I should be disciplined for making a mistake.”

The Carrier further argued that the vehicle was in good working condition and the Claimant could have avoided the accident if he gotten someone to watch out for him while he was moving the trailer. It concluded by stating that the accident was avoidable and it asked that the discipline not be disturbed.

Our thorough review of the transcript and record evidence indicates that the Claimant's truck and trailer were in good working order with all safety devices properly functioning. There is no dispute between the parties and the Claimant that the truck and trailer operated by him struck the fence gate at 179th Street Yard as

he was exiting that facility. The question is whether the accident was avoidable and the answer is yes. Two other employees who were assigned to Signal Gang 3 on June 15, 2006 were in the truck with the Claimant at the time of the incident. The Claimant testified that he could not see the rear of the trailer in the mirrors as he made his turn out of the yard. The reason he could not see the trailer was because it was not moving in line with the truck. When the Claimant realized he could not see the entire trailer he should have requested one of his co-workers (passengers) to step out of the truck to watch its movement to make sure that he cleared the gate and/or stop him if he was not going to clear it. The record substantiates that the Carrier met its burden to prove that the Claimant was negligent when he proceeded to leave the yard based upon an assumption that his trailer would clear the gate rather than verifying that it would.

The only issue remaining is whether the discipline assessed was proper. At the time of the incident, the Claimant had more than six years of seniority with no prior discipline. Therefore, the Board finds and holds that the discipline was excessive and it will be reduced to a Letter of Reprimand.

AWARD

Claim sustained in accordance with the Findings.

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 29th day of June 2010.