

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 42596
Docket No. MW-42724
17-3-NRAB-00003-140415

The Third Division consisted of the regular members and in addition Referee Robert A. Grey when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) working day suspension without pay] imposed upon Mr. C. Begin by letter dated November 8, 2013 for alleged violation of Safety Rules PGR-K(3), P-330(e) and PGR-J in connection with an incident that occurred on September 18, 2013 ‘. . . while, driving the 1994 log truck you allegedly drove under the RR underpass at Fairgrounds and the top of the tamper buggy hit the bridge, causing damage.’ was arbitrary, capricious, excessive, on the basis of unproven charges and in violation of the Agreement (Carrier’s File MW-13-27).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now remove all reference to the aforesaid discipline from Claimant C. Begin’s record and compensate him for all lost wages”

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.

The Claimant received the above-stated discipline after an investigation “to develop the facts and place your responsibility, if any, in connection with the incident(s) outlined below: Violation of Safety Rule PGR-K(3), P-330(e) & PGR-J: Rule PGR-K(3) reads as follows ‘Employees must be aware of the location of structures or obstructions where clearances are close.’ Rule P330(e) reads as follows ‘Drivers must; exercise care to prevent accident and injury to driver and others by observing all conditions.’ PGR-J: Employees must be observant and use common sense at all times. Specifically, on Wednesday, September 18, 2013 while, driving the 1994 log truck you allegedly drove under the RR underpass at Fairgrounds and the top of the tamper buggy hit the bridge, causing damage.”

The Board finds the Organization’s procedural objections unpersuasive. The Board finds substantial evidence in the record to sustain the Carrier’s determination.

The record shows that the Claimant had “great concern” about the ability of his truck and its load to clear the underpass on the route he chose to use. Because of his great concern, he slowed the vehicle to walking speed prior attempting to pass under the overpass. But, only after striking the underpass with the load (and causing damage) did the Claimant take an alternative route that was readily available to him at all relevant times – a route which had no such low or close clearance issue.

Under the facts and circumstances of this record, the Board finds that the discipline assessed by the Carrier was neither arbitrary, capricious, unproven nor in violation of the Agreement. Therefore, said discipline will not be disturbed 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 19th day of April 2017.