

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42768
Docket No. SG-42980
17-3-NRAB-00003-150178**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 Railroad Corp. (METRA):

Claim on behalf of W.R. Kirkpatrick, for the removal of the discipline assessed to him on September 25, 2013, from his personal record, and compensation for any loss of compensation or benefits he has suffered as a result of said discipline, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it issued the harsh and excessive discipline of three work days deferred suspension to him without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on September 17, 2013. Carrier's File No. 11-7-860. General Chairman's File No. 44-D-13/ BRS File Case No. 15146-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.

Claimant, a 17 year employee, was working as a Vacation Relief Maintainer on the first trick at University Park on August 22, 2013. A Notice of Investigation dated August 26, 2013 was issued to the Claimant to determine the cause of, and assess responsibility for, an accident occurring with his assigned truck on August 22, 2013. The Investigation was postponed and eventually conducted on September 17, 2013. The September 25, 2013 Notice of Discipline finds the Claimant guilty of a violation of Safety Rule 107.5 Item #1 - Observe all conditions to prevent accidents and injuries to yourself and others - and assesses him a Level 2 three day deferred suspension. The instant appeal resulted.

Only the Claimant and his Supervisor (who did not witness the accident and relied on Claimant's account in its reenactment the following day) testified at the Investigation. The facts of what took place are undisputed. The Claimant was driving his truck on University Parkway heading west towards headquarters at around noon on August 22, 2013. He stated that he was returning the truck so the afternoon Maintainer could attend a cutover meeting. The traffic was backed up going west (and open in the east lane) due to a CN train activating the crossing further ahead. The Claimant saw that the driveway to headquarters was accessible and he turned on his emergency flashing lights to go around the traffic by entering the eastbound lane driving west. He said he was traveling at about 5 mph and a car did a u-turn in front of him, pulled over to the side, acknowledged him, stopped and signaled him to come through. He did so, and while he was creeping forward, another vehicle (also attempting to make a u-turn) cut directly across him and hit his truck in the front with the side of his car.

The Claimant testified that it was like a blur and he had no time to react. The Claimant immediately pulled over and called METRA police, and attempted to have a conversation with the other vehicle's driver. According to the Claimant, the driver expressed his desire not to report it and, when the Claimant said he had to file an accident report, rushed at him, although his passenger intervened, and said they would pull over. The Claimant recalls seeing them go back to their car and hide things under the seat, which made him nervous, and he took down the license plate number. Instead of pulling over, the driver took off from the scene. The Claimant

testified that he observed all safety conditions, scanning the road ahead and saw nothing coming until this second car came out of his blind spot and hit his truck, and there was nothing he could have done to avoid the accident. The Claimant was not issued any citations by either the METRA or University Park police. It appears that the other driver was. The Claimant was able to drive the truck into headquarters, although there was damage and the front fender was rubbing into the tire. He indicated that the truck was fixed in the shop the following day.

The Carrier argues that there was substantial evidence of the Claimant's guilt of the charges since he exposed himself to the situation by engaging in the unsafe act of driving west in the eastbound lane, and that had he waited for the traffic to move, the accident could have been avoided. It notes that the truck is not an emergency vehicle authorized to proceed in this manner with flashing lights, and that it sustained over \$500 in damage. The Carrier contends that the level of discipline imposed was in line with its Progressive Discipline Policy, permitting advancement to Step 2 for safety violations of this sort, and should not be set aside by the Board, citing First Division Awards 26733, 26690; Third Division Award 25884; SBA 1122, Cases 11, 12, 27, 41.

The Organization asserts that the Claimant did not receive a fair and impartial hearing since he was prejudged by the Carrier to be guilty prior to the Investigation, and the Hearing Officer only wanted to adduce facts tending to place the blame on the Claimant rather than the other driver who was at fault and fled the scene. It argues that the Carrier presented no evidence that the Claimant did not observe the conditions, noting that the Supervisor admitted that it was a prior practice in the Signal Department to permit trucks to do what the Claimant did in this instance. It points out that the Claimant acted responsibly and called the police, who did not cite him for being at fault in the accident. The Organization contends that the discipline imposed was excessive and not in line with the Carrier's Progressive Discipline Policy or past practice, citing Third Division Award 40569, 39656, 40447, 40572, 40573; SBA 1122, Case 37.

A careful review of the record convinces the Board that no procedural errors occurred during the handling of this case, and that the Claimant was given a fair and impartial Hearing. With respect to the merits, while the accident, in and of itself, is inadequate to establish fault by the Claimant, Third Division Award 33141, or that he failed to observe all conditions to avoid accidents in violation of Rule 107.5 (1), there is no question that he bears some responsibility for creating the

situation that led to an accident. Under these circumstances, and considering the fact that the Claimant had 16 years of unblemished service at the time, the Board finds the Step 2 discipline imposed to be excessive. It shall be reduced to a Letter of Reprimand. See, e.g. Third Division Awards 30569, 39656, 40447.

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 25th day of September 2017.