

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44534
Docket No. 45602
22-3-NRAB-00003-190518**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) days suspension] of Mr. L. Pedruczny, III, by letter dated October 9, 2018, was based on allegations that he violated Pan Am Safety Rule PGR-J in connection with an incident that allegedly occurred on July 24, 2018 while he was working as a chauffeur on Log Truck #1993 was without just and sufficient cause, on the basis of unproven charges and excessive (Carrier's File MW-18-34 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Pedruczny, III shall now “*** be exonerated of all charges, his record cleared, he be fully compensated for his five (5) days suspension with all missed wages suffered, as well as any missed benefits and credits for vacation. ***”**

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 L. Pedruczny, III has established and holds seniority within the Carrier's Maintenance of Way Department. The Claimant was assigned as a chauffeur on Log Truck #1993 on Pan Am Railways Gang #5242 and working as such on June 12, 2018. At the time of the incident the Claimant had approximately two (2) months of service on the log truck.

At issue is whether the Claimant was properly assessed a 5-day suspension for contaminating the fuel system with Diesel Exhaust Fluid (DEF) causing the Carrier's vehicle to be damaged. Pan Am Safety Rule PGR-J provides Employees must be observant and use common sense at all times."

On June 28, 2018, Assistant Manager of Work Equipment J. Haskins wrote an email outlining what he believed to be the cause of the truck's mechanical failure. He subsequently had the truck towed and diagnosed on July 6, 2018. As a result, the Claimant received a Notice of Investigational Hearing dated July 30, 2018. The hearing was held on September 26, 2018. On October 9, 2018, the Carrier determined that the Claimant was responsible as charged. On November 1, 2018, the Organization filed a timely claim on behalf of the Claimant alleging that the Carrier had no proof that DEF was the cause of the damage and if it was, there was no proof that the Claimant placed the DEF in the truck. Additionally, even if there was sufficient proof of the offense, the punishment was too harsh given the Claimant's lack of prior disciplinary record. The claim was properly handled by the Parties at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. The Carrier has the burden of proving that the 5-day suspension imposed was for just cause. After careful review of the record, the Board finds the Carrier has met its burden.

There is evidence sufficient to establish that the Claimant was the cause of the damage. The Claimant was in possession of the vehicle. He stopped to add the fluids

to the vehicle. The invoice dated August 2, 2018 (Carrier's Exhibit A at 74) reflects that the diagnosis was "bad engine ECU injector drivers shorted in ECU caused by injector shorting from DEF fluid." Thus, the wrong fluid was found in the wrong place. There was no intervening action that persuades the Board that anyone other than the Claimant was responsible. A 5-day suspension for the Claimant's carelessness which resulted in damage in the amount of \$11,890.11 was not unreasonable. The Board finds no procedural violations that warrant disturbing the penalty. Accordingly, there is no evidence that the Carrier violated the Agreement.

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 8th day of October 2021.