

PUBLIC LAW BOARD NO. 1760

Award No. 20

Docket No. MW-MOB-75-29

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Norfolk and Western Railway Company *Western Region*

Statement of Claim 1. Carrier violated the effective Agreement on December 16, 1975, by suspending Kenneth S. Conrad for five days after failing to allow him a fair and impartial hearing.
2. Claimant Kenneth S. Conrad shall be paid for all time held out of service and the hearing be stricken from his record.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a Section Laborer, on November 12, 1975, was in charge of an N&W Motor Vehicle 4385. He backed his truck, at approximately 4:00 PM, into a parked automobile in the vicinity of Stamper Feed Mills at Moberly, Missouri.

As a result of this incident a formal hearing was held thereon and as a result thereof Carrier concluded that the testimony supported the charge resulting in Claimants being assessed a five (5) day actual suspension from service.

The Board concludes that Claimant received a fair and impartial hearing in conformity with the provisions of the current Agreement.

The record reflects that there was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. It indicated that Claimant was driving the vehicle, that he was in the process of parking the truck at approximately 4:00 PM, that in backing up to park the truck he struck a privately owned automobile which was parked behind the truck, and that the truck had no defective mechanisms contributing to the accident. Form MM-158, Rules and Instructions governing and use operating and maintenance of M&W owned highway motor vehicles, in Rule 6 thereof under General Rules, reads:

"Before vehicle is placed in motion the driver will look all four ways; behind, right, left, and ahead, and fully determine that clearance is adequate."

In addition to those instructions a sticker is attached to the dashboard of the trucks reasserting Rule 6.

Claimant testified that he had walked from the depot in front of the truck and got in the drivers door. Thus, it is reasonable to conclude that Claimant had failed to comply with the aforementioned instructions to determine clearance is adequate in all four directions before placing his vehicle in motion. In such circumstances Claimant was negligent in

the operation of Company vehicle 4385 on November 12,
1975.

The Board finds that the discipline assessed was reasonable
and commensurate with the nature of the proven offense.

In the circumstances this claim will be denied.

Award Claim denied.

M. A. Christie
M. A. Christie, Employee Member

E. N. Jacobs
E. N. Jacobs, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, April 4, 1980.