

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

1. The discipline assessed Assistant Foreman Floyd D. Clapp was without just and sufficient cause and on the basis of unproven and disproven charges. (Carrier's File D-11-1-446)
2. Assistant Foreman Floyd D. Clapp shall have his record cleared of the incident and should the deferred suspension be activated, he shall be compensated for all wage loss suffered.

OPINION OF THE BOARD:

On May 16, 1980, the Claimant was directed to appear at an informal investigation on the following charge:

"Your responsibility in connection with personal injury which resulted from the operation of rail anchor machine on May 15, 1980."

The charge was in connection with a personal injury sustained in a collision of equipment. The Claimant was passenger on the rear of an anchor machine which was the last of three machines moving in the same direction on track 2 near Dixon, Illinois. At the time of the collision, the machine in front of the anchor machine was stopped. Upon impact, some of the Claimant's fingers were smashed and cut when they were pinched between the machine and a red and yellow board that was being transported on the machine. The Claimant did not lose any time as a result of the accident. It is further

undisputed that just prior to the accident the Claimant and the operator were engaged in a conversation regarding where to place the red and yellow board when they arrived at the work site.

The Carrier argues that the transcript showed that the Claimant was guilty of violating Rules 1026, 1032, and 1033, which are quoted as follows:

1026

All occupants should be assigned to ride in a certain place on work equipment, instructed to use safety rails if provided and will not be permitted to ride in insecure positions, unnecessary conversation by the operator or occupants while the equipment is in motion is prohibited, is the duty of all occupants to aid operator in safe handling of the equipment.

1032

Look-out must be maintained in both directions when track cars are in use or when work equipment is traveling where there is more than one occupant. One will be in charge with the responsibility of keeping a sharp look-out behind equipment, and another will be charged with the responsibility of keeping a sharp look-out ahead.

1033

Work equipment operating under it's own power must not be attached to trains nor operating within 500 feet of the rear of a moving train or other piece of work equipment traveling in the same direction. It must not be stopped closer than 200 feet from the standing train.

In the handling of the claim on the property, the Carrier defended their action with the following argument:

"I have reviewed the transcript and it is evidence that Mr. Clapp and Mr. Rajnowski were not paying attention to what was going on in the movement of the machine. Mr. Clapp was the Assistant Foreman on this gang and is aware of the rules as he so states.

"On Page 4 of the transcript Mr. Rajnowski states when he was asked, "were you doing anything . . . immediately prior to the collision with the other anchor machine that possibly had your attention" "Yes I was talking to Mr. Clapp about where the red over yellow boards go." He was then asked, "you were asking Mr. Clapp the location to stop and place the red over yellow?" His answer was, "No. He was asking me. . ."

It is apparent that Mr. Clapp was engaged in unnecessary conversation in violation of Rule 1026, prior to the collision.

Before the Board, the Carrier argued:

"The transcript clearly indicates that neither the claimant nor the machine operator were watching where they were going. During the handling of this case on the property the General Chairman contended that the claimant was busy looking to the rear, in accordance with Rule 1032.

It is apparently the General Chairman's position that if the claimant complies with one of the safety rules he is absolved from responsibility for complying with all of the other rules. In other words, the employees are arguing that an Assistant Foreman would not be responsible for his machine running through a stop signal or red flag, if he could prove that he was supposed to be looking to the rear. What the rule means is that one of the responsibilities of claimant was keeping a look-out to the rear. But this did not permit him to be totally unconscious of where they were going."

The Organization argues that the Claimant is not guilty as he was not in violation of any of the Carrier's rules. They argue that a review of the transcript reveals that the Claimant was riding in a secure position, that he was keeping a look-out to the rear as an aid to the operator and was not engaged in unnecessary conversation with the operator. In this regard, the Organization considers the conversation between the Claimant and the operator as work related only. Further, in this connection, they made the following argument on the property:

"Clearly, Assistant Foreman Clapp would have to converse with the Machine Operator to inform him where they would have to stop to set up the red over yellow board. Such a discussion could not logically be constructed as 'unnecessary conversation' as intended in Rule 1026."

In considering whether the Claimant is guilty as charged, it is the conclusion of the Board that the record does not contain substantial evidence to support the conclusions of the Carrier. It is not reasonable to conclude that the Claimant had any responsibility

in his injury for several reasons. First, the Claimant was not the operator of the vehicle and as the rear occupant had a duty to keep a "sharp look-out behind" the equipment. The Claimant testified that he was keeping a sharp look-out behind the equipment. The Carrier presented no witnesses to refute this. Inasmuch as the Claimant had a clear duty to aid the operator by looking to the rear, it is not reasonable to hold him responsible for an accident which might have been prevented by looking forward. Just because the accident might have been prevented had the Claimant been looking forward doesn't establish that he had a responsibility to do so. Under the rules in situations as the instant one, there is a clear delineation of responsibility and it is also clear that the Claimant fulfilled his. Second, the conversation engaged in was not "unnecessary". The placement of red and yellow boards in connection with the movement and use of track equipment is an integral and necessary part of the safe operation of that equipment. The Claimant cannot be faulted for paying attention to such considerations.

We are not fundamentally disputing Carrier's right to strictly enforce rules which exhibit their concern for a safe work place. Safety is and should be a concern for parties. Additionally, as we have previously stated in Award 17, we believe that occupants of vehicles share responsibility in their operation. However, while all this is true, the Carrier is still required to show, by way of substantial evidence, that the occupant was lacking in the exercise of that responsibility and contributed in a meaningful way to the accident. In this case, the Carrier has not shown the Claimant


to be responsible in any meaningful way. It is concluded that the 30-day deferred suspension was improper and the reference to it should be eradicated from his record.

AWARD

Claim Sustained.

  
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Gil Vernon, Chairman

  
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J. D. Crawford, Carrier Member

  
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H. G. Harper, Employee Member

Date: March 25, 1982