

Award No. 1
Docket No. 1

PUBLIC LAW BOARD NO. 3666

PARTIES Brotherhood of Maintenance of Way Employes
TO
DISPUTE: and
Indiana Harbor Belt Railroad Company

STATEMENT The claim of Rosendo Rios requesting ten (10)
OF CLAIM: days pay for the ten (10) days suspension he
served and the removal of his thirty (30)
days deferred suspension.

FINDINGS: By reason of the Agreement entered into by and
between the parties on June 13, 1984, and upon
all of the evidence in the record, the Board finds that the
parties hereto are respectively the employe and the carrier
as defined in the Railway Labor Act, as amended, and that
it has jurisdiction in this proceeding.

On January 3, 1984, Claimant was notified that an
investigation would be held to determine the responsibility of
an accident which occurred at approximately 9:30 A.M. on
December 22, 1983, when a truck driven by the Claimant fouled
the main track causing Carrier's engines to strike and damage
the truck. The investigation was held on January 12, 1984.
The Claimant and his representative were present. On
February 2, 1984, the Claimant was advised that he was assessed
forty (40) working days suspension, ten (10) working days to be
served and thirty (30) working days to be held in abeyance for a
period of one (1) year. He actually served the ten (10) day
suspension from January 13 through February 24, 1984.

The record shows on December 22, 1983, Claimant was
cleaning switches in Cal Park Yard. He drove a truck rented by
the Carrier, in pursuing his work. When he tried to make a
U-turn his truck stalled in the snow on the Main Line Track.
Claimant admitted that the truck fouled the Main Line for five
minutes before it was struck by the train.

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Claimant testified that during the five minutes before the train struck the truck, he tried to move the truck out of the snow rut by shifting gears forward and backwards. He had a passenger, a Machine Operator, who remained in the truck until seconds before it was struck. Claimant admitted that he did not ask or direct his passenger to get out of the truck and watch for oncoming trains because he was frightened and did not think of it. This is hardly a reasonable excuse in view of the impending probable danger and damage to the truck, which amounted to approximately \$2,785.00. It is fortunate that the Claimant and his passenger were able to jump out of the truck before the impact and avoid serious injuries.


Carrier's Safety Rule 3342 reads as follows:

Vehicle driver is responsible for the safe and proper operation of the vehicle in his charge and the safety of the occupants.

Claimant or his passenger, at his direction, should have flagged trains on the Main Line. By not doing so, he not only violated Safety Rule 3342 but other safety rules which relate to the movement of trains, engines, and other Carrier vehicles. Being stuck on the Main Line for five minutes without protection is dangerously a long time. Claimant was negligent for not providing this protection. The suspension penalty was justified and for just cause.

AWARD

Claim denied.



DAVID DOLNICK, Chairman and Neutral Member



J. K. BEATTY, Carrier Member



WILLIAM E. LA RUE, Employee Member

DATED: Jan. 2, 1985