

SPECIAL BOARD OF ADJUSTMENT
PUBLIC LAW BOARD NO. 3729

CONSOLIDATED RAIL CORPORATION
"CARRIER"

and

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES
"ORGANIZATION"

*
*
*
*
*
*
*
*
*
*

CASE NO. 13

AWARD NO. 7

STATEMENT OF CLAIM

Claim of the Brotherhood (CR-1288-D) that:

"(a) The Carrier violated the Rules Agreement effective February 1, 1982, particularly Rule 27, when it assessed discipline of dismissal on Vehicle Operator D. Cage on October 17, 1984.

(b) Claimant Cage be restored to service with seniority and all other rights unimpaired and compensated for all wage loss suffered."

This case arose when the Carrier discharged David L. Cage, hereinafter the Claimant, for responsibility in the collision of two Carrier buses. The specific charges, contained in a Notice of Hearing dated October 2, 1984, were as follows:

"(1) To determine your responsibility concerning the collision of two Conrail buses on September 20, 1984, in Becket, Massachusetts."

(2) For violation of Conrail Safety Rule Book for M/W Employees -- Rules 3342 and 3351(f)."

Rule 3342 states that a vehicle driver is responsible for the safe and proper operation of the vehicle in his charge and the safety of the occupants. Rule 3351(f) states that a driver should follow at a safe distance allowing more than normal distance to stop while driving in adverse weather.

The Claimant was held out of service on September 20, 1984. The hearing was subsequently held on October 11, 1984. A representative of the Organization was present but the Claimant did not appear. The Claimant did not contact either the Organization or Carrier to explain his absence and there was no request for a postponement. The hearing, therefore, took place in absentia. By Notice dated October 17, 1984 the Carrier notified the Claimant that he had been found guilty as charged and that he was "dismissed in all capacities" for the offense.

The above quoted claim was then filed on behalf of the Claimant. It was processed on the property and denied by the Carrier. This Board heard argument on the claim on September 12, 1985. The Claimant was present and spoke in his own behalf.

On September 20, 1984, the date of the accident giving rise to this claim, the Claimant was a vehicle operator. He was driving a bus that was transporting Carrier employees. Cage's bus had a rear-end collision with a second bus that stopped in front of it. Thirty-six persons sought medical attention as

a result of the accident.

POSITION OF THE PARTIES

The Carrier contends the record evidence establishes that the Claimant acted in violation of Carrier safety rules and caused the accident by following the bus in front of him too closely. As the Claimant's negligence resulted in injury to 36 passengers, and someone could have been killed, his dereliction in this instance constituted a major offense requiring and justifying dismissal. Furthermore, the Carrier properly proceeded with the hearing in absentia, as the Claimant was properly notified of the hearing, he did not notify anyone of his whereabouts and there was no request for a postponement.

The Organization maintains that the charges against the Claimant were not proven by the Carrier and the discipline imposed cannot be allowed to stand. The hearing should not have proceeded in the Claimant's absence at the hearing. The only Carrier witness asked direct questions in regard to the alleged violation of the cited rules testified the Claimant was acting responsibly and the weather was clear, not adverse as required for a violation of Rule 3351. Furthermore, discharge was excessive discipline for the accident.

OPINION OF THE BOARD

This Board finds the Claimant was afforded a fair hearing. He was notified of the hearing. The Carrier properly proceeded with the hearing in the absence of any communication

from the Claimant and request for a postponement. Although the hearing officer inappropriately told a witness that "we are trying to establish" that the Claimant was in violation of rules, the Organization and Claimant had full opportunity to present their case.

There is substantial credible evidence in the record to support the Carrier's finding that the Claimant was guilty of Rule 3342 as charged. "Safety first" is an unwritten cardinal rule known by every Carrier employee. The Claimant did not put safety first when he tailgated the bus in front of him, and this negligence caused the accident.

However, the Board has further determined that the discipline imposed, discharge, was excessive and arbitrary. There is no contention that the Claimant was unprepared to drive for any reason such as the influence of alcohol. Although the record does not reflect the Claimant's length of service, the only discipline previously assessed against him was for absenteeism. The Claimant, therefore, does not appear to have a history of negligence. The accident was certainly serious, but there is no evidence that any of the 36 persons that sought medical care were seriously injured. In these circumstances, discharge was an excessive and unnecessary penalty.

As to remedy, the Board has determined that the Claimant should be reinstated but without any backpay. To allow backpay would provide a windfall to the Claimant, who caused a serious accident.

AWARD

The claim is sustained in part. The Carrier shall
reinstate the Grievant without any backpay.

S. Buchheit 11-5-85
S. BUCHHEIT
Neutral Member

R. O'Neill
R. O'NEILL
Carrier Member

J. P. Casese 11-6-85
J. P. CASSESE
Organization Member