

PUBLIC LAW BOARD NO. 4021

Award No. 29  
Case No. 35

PARTIES  
TO  
DISPUTE

The Brotherhood of Maintenance of Way Employes

and

The Atchison, Topeka & Santa Fe Railway Company

STATEMENT  
OF CLAIM

1. That Carrier's decision to assess Claimant J. R. Yarborough with thirty (30) demerits after investigation of August 5, 1986, was unjust.
2. That the Carrier now expunge thirty (30) demerits from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation August 5, 1986, because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant is guilty of violating rules he was charged with in the Notice of Investigation.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

Claimant has been employed by the Carrier for thirteen years, and currently works as a Pile Driver Operator. On June 20, 1986, the Claimant was working, and two fellow employees arrived at his work location in a company truck, seeking jack bars for use on a bridge project. Claimant had none, but agreed to accompany them to the depot at Galveston to assist in loading the material onto the truck, since neither of the employees was physically fit at the time.

At the depot, the driver of the truck backed into a pole, jarring the other employee. No damage was done to the truck or pole, but one of the other two employees filed an accident report. An investigation was held on August 5, 1986, and Claimant was charged with failing to protect the rear of the truck, as required by Bulletin Number 152. Claimant was found guilty, and assessed thirty demerits.

The record indicates that the other two employees involved each received thirty demerits for their role in the accident, but, those cases are not before this Board.

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Bulletin Number 152 provides, in pertinent part, as follows:

Before a vehicle is moved in either direction, driver must be sure there are no persons, vehicles, or other obstructions in the path to be followed. When in doubt, he will alight from the vehicle and make necessary inspection of the area which cannot be seen from the driver's seat. When a driver, having impaired rearward vision, is backing a Company vehicle, a second individual, when available, must position himself near the rear of the vehicle and act as a guide to protect the movement.

Claimant does not dispute that he was familiar with the Rule, nor does he assert that he attempted to protect the rear of the vehicle. Rather, his defense is that he was not the driver of the vehicle, and was not aware that the driver was going to back-up the vehicle until the movement was underway. The following question from the investigation, is pertinent:

- Q. When Mr. Sexton began to make his back up movement, did you make any attempt to call to his attention, that he should have a flagman at the rear of the vehicle?
- A. No, sir.

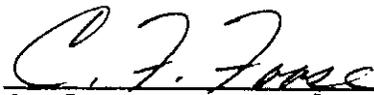
Claimant certainly had to be aware that the truck was backing-up when the movement began. He knew and understood the Rule, knew that the driver was physically impaired, but took no personal responsibility for protecting the vehicle. The Board finds that the Claimant violated Bulletin Number 152.

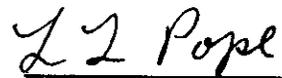
The Board does not agree with the measure of discipline assessed. The record in this case does not indicate that Claimant had any prior discipline in his thirteen years of service. Further, the Claimant was merely a passenger in the vehicle and, while the Rule makes all employees responsible, it is clear that the greater responsibility rests with the driver. The record reflects that both the Claimant and the driver received the same amount of discipline.

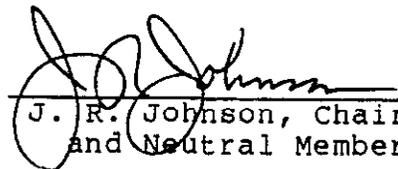
Under the Brown System of Discipline, it would require one year for the Claimant to expunge thirty demerits from his record. In view of his exemplary past record, and the nature of the offense involved, it is clear that thirty demerits is excessive. We will reduce the discipline to ten demerits.

AWARD

The discipline is reduced to ten demerits.

  
C. F. Foose, Employee Member

  
L. L. Pope, Carrier Member

  
J. R. Johnson, Chairman  
and Neutral Member

Dated: 10/6/86