

PUBLIC LAW BOARD NO. 4187

PARTIES) BROTHERHOOD OF RAILROAD SIGNALMEN
TO)
DISPUTE) NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"Claim on behalf of Signal Testman S. L. Suzewits, for payment of 5 days pay at his pro-rata rate of pay, account Carrier violated the current Signalmen's Agreement, as amended, when it failed to meet its burden of proof with respect to the charges placed against him at an investigation held on July 30, 1984." (Carrier File: SG-DEC-84-7; BRS File: 6848-NW)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

While operating a track motor car for the purpose of making test inspections on June 6, 1984, the car overheated and the Claimant, after reportedly stopping and waiting from three to five minutes, attempted to add water to the radiator. Claimant says he turned the radiator cap about a quarter turn to relieve the pressure and permit the radiator to cool at a more rapid rate. Unfortunately, escaping steam, being blown by the wind, caused Claimant to sustain burns to his arm and side.

Claimant described the incident and injury in the following manner at the company investigatory hearing:

"I was southbound on the motor car going back to Monticello, and the motor car was running bad because it had a hole in the bottom, resulting in losing water, so I pulled over, turned off the motor car, let it sit for maybe three to five minutes, and I went and turned the radiator cap about a quarter of a turn and started relieving the pressure. Steam was coming out in relieving the pressure, and after about ten seconds, the pressure, it built up, and it resulted in, it blew the cap off the top of it, and wind was blowing pretty hard, and it just blew all the water right on me, on my left arm and side."

Further review of the transcript of hearing reveals that Claimant was fully aware that the track motor car was leaking water. He had experienced similar problems during his previous operation of the motor car. He was carrying additional containers of water in

the car for such purpose. And, more importantly, Claimant testified that he went through the procedure of replacing water in the radiator of the track motor car three or four times in the recent past and that it could take "a good hour" for the radiator to cool down.

In the circumstances, it must be concluded that Claimant knew or should have known the proper and safe manner to replace water in the track motor car's radiator. Thus, it must be held that Carrier had sufficient reason to hold that on the date in question Claimant was in violation of Safety Rule D in that he had failed to exercise care to avoid injury to himself.

We do not find meritorious those arguments which contend that Claimant be exonerated of responsibility on the basis of being required to work with defective equipment. There is no showing that merely because the radiator was subject to overheating that this circumstance had constituted a personal danger to Claimant. There is also nothing of record to show Claimant had objected to operating the motor car in the knowledge it had a radiator leak or that he had otherwise filed a complaint about it being an unsafe vehicle. Nor does the Board find that Claimant's actions may be excused on the basis that Claimant's immediate supervisor had not expressly instructed Claimant on how to replace water in a radiator. As indicated above, Claimant was knowledgeable as to how water was to be added to a radiator and of the necessity to especially permit a radiator to sufficiently cool down before removing a radiator cap. In this same regard, it is significant that Claimant had stated at the company hearing that he has also had occasion to add water to his own personal vehicle when it overheated.

AWARD:

Claim denied.



Robert E. Peterson, Chairman
and Neutral Member



W. L. Allman, Jr.
Carrier Member



V. M. Speakman, Jr.
Organization Member

Roanoke, VA
July 31, 1987