

PUBLIC LAW BOARD NO. 5606

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM:

1. The entry of reprimand plus three (3) days suspension from service to be served from June 14, 1999 through June 16, 1999 by Foreman S. P. Keniston for his alleged violation of Rules GR-A, GR-C and 329(d) when he allegedly failed to wear his seat belt while being in a company vehicle coming into Rigby Yard at approximately 11:30 A.M. on April 1, 1999 was without just and sufficient cause and in violation of the Agreement.
2. As a consequence of the aforesaid violations, Foreman S. P. Keniston shall now be compensated all wage loss suffered and have his record cleared of the incident. (Carrier File: MW-99-13)

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.

It is evident that the transcript of investigation as prepared from a tape recording of a hearing accorded the Claimant on May 5, 1999 leaves much to be desired. No less than 33 pages of the 60-page transcript contain either notations that the tape machine had cut out, blank spaces in testimony, question marks after words that the transcriber found to be questionable, and instances where there is an apparent lack of continuity from one tape to another.

The Board does not find that it may excuse the failure to produce a full transcript because reportedly the clerk transcribing the hearing was not able to understand certain portions of testimony. The Carrier has a contractual responsibility to provide a full and accurate transcript. Nor does the Board find reason to hold, as the Carrier urges, that while some of the testimony was unintelligible, the majority of the transcript is intact, and what is undeniable within the transcript is the fact that the Claimant, as charged, was not wearing his seat belt while riding in a company vehicle.

As stated in Award No. 2166 of the Fourth Division, NRAB, ARSA v. CNW, with the Honorable Dr. Jacob Seidenberg as the chair and neutral member, which language we affirm and adopt as being likewise dispositive of the instant case:

The Claimant is contractually entitled to a fair and impartial hearing and to a transcript that completely represents what took place at the hearing. * * * This must obviously be so because the transcript is not only the basis of the original discipline, but it is also the only basis for prosecuting an appeal from the original determination. It is true that at the oral hearing before the Division the Carrier stated that only minor details were omitted from the transcript, but what may be minor to the Carrier could well be major to the Organization. This sort of transcript is not designed to inspire confidence as to its completeness.

Accordingly, the Board finds, as did the Fourth Division in Award No. 2166, that in view of there being a rather incomplete transcript that it is not necessary or proper to review the substantive aspects of the case. The claim will, therefore, be sustained.

AWARD:

Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Timothy W. McNulty
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated JUNE 20, 2000