

D-1505-1

PUBLIC LAW BOARD NO. 5696

AWARD NO. 18

CASE NO. 18

BURLINGTON NORTHERN RAILROAD

PARTIES

TO DISPUTE:

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) Mr. J. E. DeRousse was unjustly suspended for fifteen days beginning August 7, 1995, and ending August 21, 1995, for his alleged responsibility in connection with a Company Vehicle accident at approximately 9:00 a.m. on June 13, 1995, at Crystal City, Missouri.
- (2) As a consequence of the Carrier's violation referred to above, Claimant should be paid for all time lost and the discipline shall be removed from his record.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a Track Foreman with a service date of September 18, 1972, was suspended for fifteen days for his responsibility in connection

with a Company vehicle accident occurring on June 13, 1995 in Crystal City, Missouri. He was charged with violating the following Operating Rules:

Rule 1.1.2

Employees must be careful to prevent injury to themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

Rule 1.6

Employees must not:

- No. 1. Be careless of the safety of themselves or others or
- No. 2. Be negligent.

The August 16, 1995 investigation reveals that Claimant and trackman Clint Avis were traveling from the depot to the main highway on Mississippi Ave. on the morning of June 13, 1995, the only available route due to flooding. That street is cobblestoned, and permits parking on both sides, which makes it a tight fit when two cars are attempting to pass each other in opposite directions. Claimant was driving Carrier's 1994 Chevy truck, and was familiar with that route under similar road conditions. He testified that it was normal practice for one car to stop and let the other pass in the opposite direction when cars were parked on both sides of the street, as was the situation that morning.

It was a clear day and both Claimant and Avis were wearing their seat belts. Claimant stated that he was waiting for the dispatcher to respond to his call for his track and time, and was not sure if his track and time book was in his hand or on the dashboard. He explained that he was the only one in the truck authorized to get the track and time, and that he

had been told by supervision in the past not to waste time at his destination but to do it en route, so that was his normal practice. Claimant admitted that this may not have been a standard safety practice but noted that its safety depended on traffic patterns.

According to Claimant, he saw another car approaching in the opposite direction and slowed down to let it pass. At that moment, his pencil dropped to the floor and, instinctively, both he and Avis looked down to the floor to reach for the pencil. In doing so, Claimant momentarily took his eyes off the road and sideswiped the parked car, causing minor damage to each vehicle. He stated that he only realized this when he heard a scraping noise, and pulled over to assess the damage.

Claimant reported the accident and met with Special Agent James Todd at the Crystal City depot where he answered questions and willingly filled out a Vehicle Accident Data Sheet, stating that he was "driving north, watching oncoming cars, looking for pencil on seat, looked up and saw parked car too late to stop. Traffic is congested." Todd testified that Claimant was very cooperative, and there were no outside elements involved per the routine urinalysis performed. No citation was issued to Claimant.

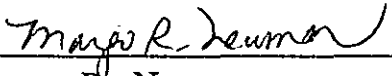
The Organization argues that the punishment was not commensurate with the offense, which is mitigated by Claimant's cooperation, the fact that no citation was issued, there were no injuries, minimal damage, Claimant was forced to take this congested route, and they were wearing seat belts. The Organization contends that there was no negligence in this case.

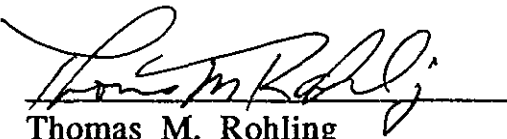
After full consideration of all of the facts, this Board is of the opinion that there is substantial evidence in the record to support the Carrier's

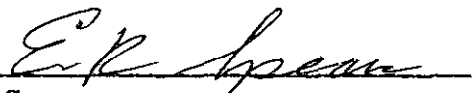
action in suspending Claimant for fifteen days for his involvement in the vehicle accident on June 13, 1995. Claimant understood Rules 1.1.2 and 1.6, and admitted that maybe he should have done things differently on this occasion by not attempting to get his track and time at the same time as he was driving, and fully concentrating on the traffic conditions with the oncoming car approaching. While he did not admit his negligence, the record supports Carrier's conclusion that he violated the cited Rules on June 13, 1995 resulting in the vehicle accident. While Claimant is a long term employee with a good disciplinary record, absent evidence that similar situations have been treated more leniently by Carrier, this Board is unable to find the penalty imposed excessive, despite the mitigating factors argued by the Organization.

AWARD:

The claim is denied.


Margo R. Newman
Neutral Chairperson


Thomas M. Rohling
Carrier Member


E. R. Spears
Employee Member

Fort Worth, Texas
January 22, 1997

