

AUG 19 1996

BEFORE PUBLIC LAW BOARD NO. 5839

B. M. W. E.

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
**and**  
**UNION PACIFIC RAILROAD COMPANY**  
(Former Oklahoma-Kansas-Texas Railroad)

Case No. 11

**STATEMENT OF CLAIM:**

1. The Level 1 discipline assessed D. D. George, SSN 429-68-4681, for his alleged violation of Rule 42.6 in connection with a collision between a company vehicle and a private vehicle on August 29, 1994, was unwarranted, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement.

2. As a consequence of the violation referred to in Part (1) above, the Letter of Reprimand assessed shall be removed from the claimant's personal record.

**FINDINGS:**

On August 10, 1994, the Claimant was involved in a collision with a private vehicle while operating the Carrier's tamper through a road crossing. A formal investigation was held and it was determined that the Claimant was guilty of violating Carrier Rule 42.6. Subsequently, the Claimant was issued Level 1 discipline which is a letter of reprimand.

The Organization took exception to the discipline assessed the Claimant and filed the instant claim on his behalf contending that according to the testimony of witnesses to the accident, as well as the police report, the Claimant did not strike the private vehicle but rather the private vehicle struck the Claimant's tamper. The Organization contends

that the discipline assessed to the Claimant is unwarranted since the accident was clearly not the Claimant's fault.

The parties being unable to resolve the issue, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that the Carrier has not met its burden of proof that the Claimant was in violation of a rule justifying his discipline. Therefore, the claim must be sustained.

The Claimant was charged with violation of Rule 42.6. That rule states:

Track cars and on-track equipment must approach all grade crossings prepared to stop, and must yield the right of way to vehicular traffic. If necessary, flag the crossing to protect movement of a track car or on-track equipment.

The record in this case reveals that the Claimant was working as a machine operator operating a Carrier tamper through a road crossing when it was struck by a private vehicle on August 29, 1994. A thorough review of the testimony and other evidence in the file indicates that the operator of the private vehicle never touched her brake, and may have pulled around another vehicle, a Ford pick-up truck, that was stopped at the intersection prior to the time that she entered the grade crossing. There were no skid marks which would have indicated that the driver of the private vehicle had attempted to use her brake. The lights were flashing and the Claimant was utilizing his horn and other safety equipment. The tamper had already stopped at the time of the impact. Given those facts, this Board must find that the Claimant approached the grade

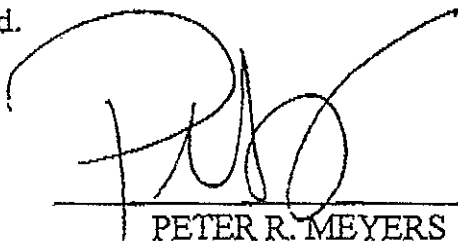
crossing prepared to stop and yielded the right-of-way to the vehicular traffic. The vehicular traffic in this case paid absolutely no attention to the flashing lights, the horn, and even the fact that there was another vehicle stopped in front of her. With those above facts in the record, we find that the Claimant can hardly be found to have violated Rule 42.6.

It is fundamental that just because that an accident occurs does not necessarily mean that a rule violation happened and that an employee must be disciplined for it. Sometimes accidents occur and there is no proven fault on the part of the Claimant. That is the case here. This Claimant and the Carrier equipment were the victims of an irresponsible and a reckless driver. It was an unfortunate occurrence but there was no just cause to issue a Letter of Reprimand to this Claimant.

For all of the above reasons, the claim must be sustained.

#### AWARD

Claim sustained. The Letter of Reprimand issued to the Claimant shall be removed from his record.



PETER R. MEYERS  
Neutral Member



Carrier Member



Organization Member

5839-11

DATED: July 25, 1996

DATED: 7-29-96