

PUBLIC LAW BOARD NO. 6394

Award No. 1

Parties to Dispute:

Brotherhood of Maintenance of Way Employees  
(Consolidated and Pennsylvania Federations)

and

Norfolk Southern Railway Company

Statement of Claim:

Claim on behalf of S. G. Prather for removal of a ten (10) day actual suspension and payment for time lost as a result of discipline assessed following a formal investigation held on July 18, 2000, in connection with his violation of Rule 3, 5, and 21 of the Carrier's Highway Vehicle Operator's Manual resulting in a collision with another vehicle on June 28, 2000, at 51st Street, Chicago, Illinois.

(Carrier File: MW-DEAR-00-13-BB-242)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

Claim disposed of as follows:

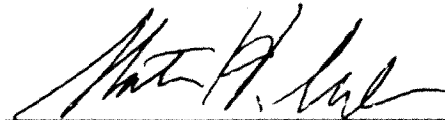
The record reflects that on June 28, 2000, Claimant was operating a Carrier vehicle. He made a right turn out of a McDonald's restaurant parking lot onto 51<sup>st</sup> Street in Chicago and was struck by an oncoming car. The record reflects that Claimant was cited by the Chicago Police for failing to yield to an oncoming vehicle. Claimant testified that he did not see the vehicle. He suggested that the vehicle may have been speeding. When asked if the accident was his fault, Claimant replied, "Not entirely, no."

The possibility that the other vehicle may have been exceeding the speed limit and that the other driver may have been contributorily negligent does not exonerate Claimant for his responsibility for failing to yield. Accordingly, we find that Carrier proved the charges by substantial evidence.

The Organization has argued that the claim be sustained because Carrier sent the investigation transcript to an Assistant General Chairman other than the Assistant General Chairman who was representing the Claimant. However, the record reflects that the transcript was promptly forwarded to the proper General Chairman and Claimant's rights were not prejudiced by the mistake. Accordingly, the misdirection of the transcript provides no basis for overturning the discipline.

Claimant is a long service employee who, prior to this incident, had a spotless record. However, we note that the incident in question caused significant damage to Carrier's vehicle, totaled the other vehicle and resulted in personal injury to the other driver. In comparable circumstances, awards have upheld suspensions considerably longer than the ten day suspension assessed in this case. We cannot say that the discipline imposed was arbitrary, capricious or excessive.

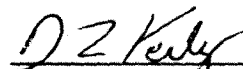
Claim denied.



M. H. Malin  
Chairman and Neutral Member



P. K. Geller, Sr.  
Organization Member



D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois, May 29, 2001