

PUBLIC LAW BOARD NO. 2960

AWARD NO. 17
CASE NO. 8

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The discipline assessed Maintenance of Way Employees J. E. Grossman, R. A. Maystadt and M. L. Irvin was without just and sufficient cause. (Carrier's Files D-11-3-315; D-11-3-316; and D-11-3-317)
2. The Claimants shall have their records cleared of the deferred suspensions.

OPINION OF THE BOARD:

On March 18, 1980, Claimants were directed to attend an investigation on the following charge:

"Your responsibility in connection with accident which occurred on Saturday, March 15, 1980, when high rail vehicle you were in (System NO. 21-3616) collided with high rail vehicle (System No. 21-3451) at MP 248.3 causing approximately \$1500.00 damage."

The hearing was held April 3, 1980, and subsequent to the hearing Claimant Maystadt was assessed a ten-day deferred suspension and Claimants Grossman and Irvin were assessed five-day deferred suspensions.

The transcript reveals that on Saturday, March 15, all three Claimants were riding in a high rail vehicle when it collided into the rear of another vehicle. The Claimants' vehicle sustained

significant damage. One repair estimate was for \$1420.80 and the other was for \$1906.32. It also is undisputed that Claimant Maystadt was driving the vehicle, Claimant Grossman was in the front passenger seat and Irvin was in the rear seat.

The Carrier contends that the actions or lack of actions on the part of the Claimants contributed to the accident and were a violation of Rules 1062 and 1069.

"Rule 1062.

Employees in charge of hy-rail vehicles will be responsible for their safe operation.

Rule 1069.

It is the duty of all occupants of hy-rail vehicles to aid the operator in safe handling of the vehicle."

The Carrier suggests that had each Claimant been paying full attention the accident, in all probability, would have been prevented. Regarding Maystadt, they direct attention to a portion of the transcript which they contend shows that he was not paying attention as he was trying to pick something up from the floor. Regarding Mr. Grossman, they direct attention to a portion of the transcript which they contend shows that he was bent over "looking down" adjusting the radio and did not see the truck until he was 30 yards away. Regarding Irvin, they recognized that he did tell Maystadt to stop but, the Carrier contends, it was too late.

The Organization contends that Mr. Grossman cannot be faulted for paying attention to the radio as he was checking on the location of Train 256 which is an important aspect of safe high rail operation as well. They also contend that Mr. Irvin cannot be faulted because

he did in fact shout a warning to Maystadt, the driver. Moreover, they contend Mr. Maystadt cannot be faulted because an object had fallen on the floor obstructing the operation of the pedals.

In reviewing the evidence in this case we must first state that the pertinent rules as promulgated by the Carrier are reasonable and necessary. We believe that all occupants should share in responsibility for the safe operation of high rail vehicles. It is also important to keep in mind that irrespective of the fact the discipline was light and did not result in actual suspension, we must first make a full determination on the question of guilt. Regarding Mr. Irvin and Mr. Grossman, we find the Organization arguments persuasive. It is undisputed that Mr. Irvin yelled a warning to Mr. Maystadt. The Carrier contends it was too late, implying had he been paying attention he could have warned him sooner. However, based on the evidence, it cannot be concluded that the warning was too late. Grossman testified that when Irvin yelled Maystadt didn't immediately comprehend what he was saying.

"I believe, Robert, when he heard Marvin yell, he didn't actually comprehend what Marvin said. He looked back at Marv like "what did he say". He wanted to know what he said. He wasn't at all aware of the truck being that close when Marvin yelled. He didn't know what the yelling was all about. He didn't understand what he was saying."

It is fully possible that had the driver immediately understood the warning and heeded it the truck could have stopped in time. Carrier does not refute this possibility. Mr. Irvin cannot be faulted because his warning was not heeded immediately. It seems he (as someone in the backseat) did everything he could to prevent the accident.

Regarding Mr. Grossman, we also find that he too is not guilty of not aiding "the operator in the safe handling of the vehicle." It is undisputed that he was checking on the radio to find the location of Train 256. Ascertaining the location of train movements is an important and integral part of the safe operation of a high rail.

In reviewing the evidence in regard to Mr. Maystadt, we find that there is substantial evidence to conclude that Claimant was negligent to some degree in the accident. While the record does show something fell on the floor, it is not clear that it fully prevented Mr. Maystadt from responding to the obstruction in a safe way. At one point he testified that the object was blocking the pedals and later seemed to contradict this when he stated it was blocking his heel so he could not move his right foot, instead of blocking the pedal. Moreover, it is not explained why he did not respond sooner to Mr. Irvin's warning.

In considering whether a 10-day deferred suspension is appropriate, we agree that not only is it not excessive but lenient.

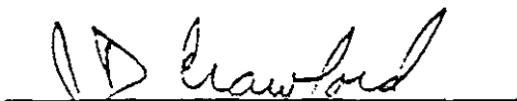

In summary, the records of Claimants Grossman and Irvin should be cleared of the deferred suspension while the discipline assessed Mr. Maystadt shall stand.

AWARD

Claim sustained to the extent indicated above.



Gil Vernon, Chairman


J. Q. Crawford, Carrier Member
H. G. Harper, Employee Member

Date: Feb 5, 1982