PUBLIC LAW BOARD NO. 2960

AWARD NO. 81
CASE NO. 96

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The ten (10) day deferred suspension assessed Machine Operator D. G. Weik for his alleged responsibility in a motor vehicle collision was without just and sufficient cause and on the basis of an unproven charge. (Organization File 3D-2883; Carrier File D-11-1-476).

(2) Machine Operator D. G. Weik shall be allowed the remedy prescribed in Rule 19(d).

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employe and Carrier involved in this dispute are respectively Employe and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On February 4, 1982, the Carrier directed the Claimant to attend an investigation. The notice read in pertinent part as follows:

"You are hereby directed to appear for a formal investigation as scheduled below:

Date: Thursday, Febuary (sic) 11, 1982

Time: 9:00 A.M.

Place: Office of the Roadmaster - Benld, Illinois

Charge: To determine your responsibility and to develop the facts in connection with accident involving Company vehicle #21-2953, when on Febuary (sic) 3, 1982 this vehicle operated by you was involved in a vehicle accident near Glen Carbon, Illinois while you were employed as a Machine Operator on the Illinois Division.

"You may be accompanied by one or more persons of your own choosing subject to the applicable terms of the scheduled agreement with the Brotherhood of Maintenance of Way Employees and you may, if you so desire, produce witnesses in your own behalf without expense to the Chicago and Northwestern System."

Subsequent to the investigation, the Carrier assessed the discipline now on appeal before the Board. The discipline involved Rule 7, which in part prohibits employes from "...being careless of the safety of themselves or others...."

The basic facts are not in dispute. The testimony brought forth at the investigation revealed that on the morning of February 3, 1982, the Claimant was operating Company Truck #21-2953 west on Glen Carbon Road when the van in front of him, owned by Holiday Cleaners of Edwardsville, came to a stop at the intersection of Route 157. The roads were apparently slippery on that date due to a recent snowfall, and the Claimant was unable to stop his vehicle before striking the rear of the van at the intersection. Though no damage was sustained by the Company truck, both rear doors of the Holiday Cleaners vehicle were damaged.

It has often been stated that the simple fact that an accident has occurred does not per se dictate that the employe involved was negligent or at fault. In this respect, the icy road is definitely a mitigating factor. However, there is enough other evidence to convince

the Board that the accident could have been avoided on the Claimant's part by exercising more care.

Both the Claimant and his witness each testified that they were fully aware of the poor road conditions and had, in fact, been following that particular vehicle for a considerable distance. The Claimant also testified he had stopped twice behind the van without incident. Based on this, the slippery conditions were no surprise to the Claimant and he should have exercised more care. We also note that he was vague and evasive in response to questions as to how far back he had been following the other vehicle. In the Board's opinion, these factors, taken into consideration with the record as a whole, constitute substantial evidence.

AWARD:

In view of the foregoing, the Claim is denied.

Gil Vernon, Chairman

H. G. Harper, Employe Member

J. B. Crawford, Carrier Member

Dated: 2/22/85