

PUBLIC LAW BOARD NO. 3445

Award No. 2

Case No. 2

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

And

Southern Railway Company

STATEMENT OF CLAIM:

W.S. Reid, Foreman, 1911 Willymax Avenue, Gastonia, N.C. 28052, was suspended from service for 30 days for allegedly violating Operating Rule 1521 in connection with Smoothing Machine being struck by an automobile. Employees request pay for all time lost with vacation and seniority rights unimpaired.

FINDINGS:

Claimant, at the time of the incident in question, was employed by Carrier as a track foreman at Gaffney, South Carolina.

By letter dated December 17, 1981, Claimant was notified to attend an investigation concerning charges that he violated Operating Rule 1521 on December 16, 1981. An investigation was held on December 22, 1981. By letter dated December 28, 1981, Claimant was notified that he was suspended from service for the period from December 17, 1981 to January 17, 1982, for his culpability concerning the above-cited violation.

The issue to be decided in this dispute is whether Claimant was disciplined for just cause under the Agreement.

The position of the Carrier is that Claimant violated Rule 1521 on the date in question by entering a grade crossing without due caution and striking an automobile going through the crossing. Rule 1521 states, "On-track equipment approaching a highway grade crossing, must be prepared to stop short and must not enter the crossing until the way is known to be clear".

The Carrier contends that testimony produced at the hearing established that Claimant failed to ensure that his machine could properly stop short of the crossing and that he entered the crossing without making sure that it was clear resulting in the accident. Specifically, the Carrier cites Claimant's own testimony which indicated that he took no action to ensure that the machine entered the crossing area with due caution. The Carrier further cites Claimant's testimony where he admitted to being in charge of and responsible for the safe operation of the machine.

Finally, the Carrier argues that the discipline imposed was reasonable. The Carrier contends that Rule 1521 must be complied with in order to ensure overall safety, and that Claimant's violation of the Rule created a potentially catastrophic situation.

The position of the Organization is that Claimant was not primarily responsible for the accident in question and therefore should not have been disciplined by Carrier.

The Organization admits that Claimant was the employee in charge on the date in question. However, it is the Organization's position that Machine Operator A.M. Earnest was primarily responsible for the accident since he was operating the machine at the time of the accident. The Organization cites Earnest's testimony, where he indicated that he was responsible for the safe operation of the machine. The Organization contends that Earnest was primarily negligent, and that the discipline imposed against Claimant was unwarranted.

The Organization, in further support of its position, points to the fact that the automobile driver involved in the accident was charged with failure to yield right of way. The Organization maintains that in light of the circumstances surrounding the accident, Claimant's discipline was without just cause.

After a review of the entire record, the Board finds that a ten day suspension, under the circumstances, was appropriate.

It is not the purpose of this Board to rehear an investigation that the Carrier held but only to determine if the discipline imposed was arbitrary, capricious, or an abuse of discretion.

The Carrier has established through substantial, credible evidence that Claimant violated Rule 1521. Claimant admitted his failure to ensure that the machine was "prepared to stop short" or that the crossing was "known to be clear". The accident itself indicates that Claimant could not have checked to make sure the crossing was clear. Claimant further admitted


that he was responsible for the safety of the machine's operation. We, therefore, find that Claimant was guilty of violating Rule 1521 on the date in question.

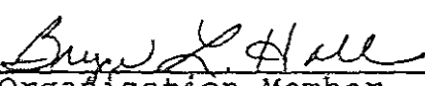
Notwithstanding the above, the Board finds that the discipline imposed was excessive under the circumstances. As noted by the Organization, Machine Operator Earnest was negligent in his duties and was a major factor in causing the accident. Although we agree that Claimant was ultimately responsible for the safety of the machine, we find that Earnest's negligence was at least partly responsible for the accident. Further, although not conclusive, the fact that the automobile driver was negligent in not giving Claimant's machine the right of way further mitigates Claimant's responsibility for the accident. While we do not exonerate Claimant, we find that a thirty day suspension was excessive, and, accordingly, must be reduced to ten days. We feel that such a suspension is reasonably commensurate with the offense committed.

AWARD

Claim disposed of per Findings herein.


Netural Member


Carrier Member


Organization Member

Date: 11/13/85