

PUBLIC LAW BOARD NO. 3530

Award No. 4  
Case No. 4

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Machine Operator, O.L. Austin, Rt. 2, Box 22-E, Crewe, VA 23930, allegedly charged with Ballast Regulator he was operating striking Company Truck N.W. 1946. Employees request Mr. Austin be paid for all lost time, with vacation and seniority rights unimpaired.

FINDINGS:

On November 16, 1981, Claimant was operating a ballast regulator near New Bohemia, Virginia. At approximately 11:15 a.m., while Claimant was operating it in reverse, the machine struck one of Carrier's vehicles. On November 17, 1981, Claimant was informed that he was being assessed a five-day actual suspension for his responsibility in connection with the accident. The Organization requested and was granted an investigation in Claimant's behalf. After reviewing the evidence adduced at the investigation, the Carrier sustained Claimant's suspension.

The Organization filed a Claim protesting Carrier's action and requesting that Claimant be reimbursed for time lost. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Public Law Board for resolution.

The issue to be decided in this dispute is whether Claimant's suspension was supported by just cause, and if not, what should the remedy be.

The record shows that just prior to the accident, Roadmaster Tribble parked his truck some ten to fifteen feet behind Claimant's ballast regulator on the south side of the eastbound track and four or five feet south of the southern rail. At the hearing, Tribble testified that he realized there was insufficient clearance for his truck to pass the ballast regulator on the south side. At this time, Claimant was outside his machine, making some adjustments to the plow. Though Tribble saw Claimant, he did not speak to him while walking by. The record shows further that though the truck was fairly close to Claimant's ballast regulator, he was unaware of its presence and backed his machine into it.

Carrier has the right to expect all employees to exercise reasonable care when operating equipment. Reasonable care includes keeping a proper lookout to ensure that there are no obstructions in the path of machinery being operated. At the hearing, Claimant admitted that he did not know the truck was behind the machine. Since Claimant also testified that the truck was parked close to the ballast regulator, the only conclusion can be that Claimant did not check to make sure his path of operation was clear. If Claimant had done so, he would have seen the truck.

The Organization cites several reasons why Claimant should not be held responsible for the accident. It is argued that Tribble failed to warn Claimant of the truck's presence, that Claimant was working on the north side of the track so that he had no cause to look on the south side, and that the rear cab window of the machine was scratched and pitted and difficult to see through.

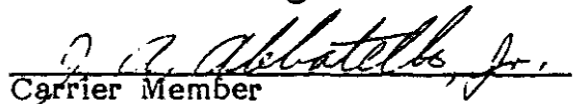
The fact remains, however, that a reasonable person in Claimant's circumstances would have made certain the track was clear on both sides before operating the ballast regulator. It is true that Tribble may have been negligent in failing to warn Claimant of the truck's proximity. If so, it is Carrier's decision whether Tribble should be disciplined in some way. Wrongdoing on Tribble's part, however, did not relieve Claimant of the responsibility for operating his machine in a safe manner.

For the reasons stated above, it is the decision of this Board that there was just cause for Claimant's suspension, and that the claim must therefore be denied.

AWARD:

Claim denied.

  
Neutral Member

  
Carrier Member

  
Organization Member

Date: 4/27/84