

PUBLIC LAW BOARD NO. 5606

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The three (3) days suspension assessed J. C. Kelleher for his alleged negligence in the performance of his duties while operating a dump truck on June 9, 2003 was without just and sufficient cause, based on an unproven charge and in violation of the Agreement.**
- 2. As a consequence of the violation referred to in Part (1) above, J. C. Kelleher shall be compensated for all wage loss suffered and have his record cleared of this incident. (Carrier File MW-03-48)**

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The three-day suspension here on appeal was assessed Claimant in a finding by the Carrier at a formal investigation on July 10, 2003 that he was negligent in the performance of his assigned duties while operating a company dump truck on June 9, 2003. Claimant backed the truck into and caused damage to a signal post located in the vicinity of Greely Road in Auburn, Maine. The signal post was knocked over, with the casting that fastened it to the concrete footing having been broken.

In a report that Claimant filed with the Carrier, Claimant described the accident to have occurred as follows: "Came to crossing at Greely Road. Pulled off to right and backed across road. Didn't see signal post and backed into it." At the company hearing, in response to a question by his representative as to when he was backing the truck up was there at any point in time that he realized that "something was missing or something wasn't just right and you stopped," Claimant said: "Not until the last, maybe, second. It's like okay, something's missing from the picture. And that was it."

It was offered in defense of Claimant that there was some traffic in the area, it was a cloudy, overcast day, and Claimant had not been to the location of the accident for some time. The Board does not find these arguments to constitute mitigating circumstances sufficient to excuse Claimant's negligent operation of the truck. Nor do we find that because he stopped immediately, knowing that he had struck the signal post, that this circumstance may somehow be viewed as reason to conclude that Claimant was operating the truck in other than a negligent manner. As the Carrier states, Claimant knew he would be backing in close proximity to the signal post, and should therefore have exercised more caution, not less, in the performance of his duties.

There is no question in review of the hearing record, including statements of Claimant, that the cause of the accident was due to Claimant being inattentive to the area in which he backed the truck.

In regard to procedural argument made by the Organization, the Board does not find the fact that the hearing officer had been seen in the Work Equipment area looking over the truck in question, and observed asking questions about the vehicle and the truck's log, as reason to conclude that the hearing officer created a conflict of interest and should have recused himself as the hearing officer. It is not unusual for a hearing officer to seek benefit of certain information in preparation for a hearing.

The conduct of a company hearing in a disciplinary proceeding does not require an adherence to all the attributes of a trial as in a court of law. A company hearing is more in the nature of an administrative proceeding than an action at law. It is not governed by technical rules pertaining to the admission or consideration of evidence or testimony as with criminal trials or civil court actions. Carriers are not bound to prove beyond reasonable doubt, as in criminal cases, the guilt of the employee being tried. Although the carrier must show that it acted upon evidence that warranted application of the discipline imposed, evidence is considered sufficient if in considering all the relevant facts and testimony presented at the hearing the conclusion may be reached that the charge or complaint is true.

The Board also finds no merit in Organization argument that the Carrier failed to properly notify Claimant of the hearing in compliance with the time limit provisions of Article 26, "Discipline." This agreement rule states in part here pertinent: "The notice of hearing will be *mailed* to the employee within 10 days of the Carrier's first knowledge of the act or occurrence." (Emphasis Added.)

The Carrier's first knowledge of the incident was the date of occurrence, June 9, 2003. Evidence of record shows the notice of hearing to have been date-stamped by the post office on June 19, 2003 for certified delivery to the Claimant. Thus, under

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recognized interpretations of time limit rules, where the first date is not counted, it is evident that the notice was *mailed* to Claimant in compliance with the prescribed ten-day time limit. That Claimant did not accept or acknowledge delivery of the certified mailing of the hearing notice until June 26, 2003 does not establish a violation of Article 26. The term, mailed, as set forth in Article 26, may not be viewed as having intended a date of delivery or receipt of a notice by an employee.

While the initial notice set the hearing date for June 25, 2003, the hearing was postponed at the request of the Organization and subsequently held, as stated above, on July 10, 2003. It is therefore evident that Claimant and his representative had sufficient time to prepare a defense against the charge. And, in this latter regard, contrary to further Organization argument, the Board is satisfied that the charge was sufficiently detailed so as to have placed Claimant on notice of the incident upon which he was charged. Article 26 states: "The notice of hearing will contain information sufficient to apprise the employee of the act or occurrence to be investigated. Such information will include date, time, location, assignment, and occupation of the employee at the time of the incident." The notice addressed each of the aforementioned items.

The Board finding no merit in the several procedural arguments advanced by the Organization, and it being evident that Claimant was guilty as charged, we have no basis to conclude that the Carrier did not have just cause to impose the disciplinary penalty here on appeal. The claim will, therefore, be denied.

AWARD:

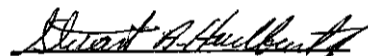
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Timothy W. McNulty
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated Sept. 30, 2004.