

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY

Case No. 26

STATEMENT OF CLAIM:

Appeal of Claimant Robert A. Lucansky suspension from Carrier's service.

FINDINGS:

On June 20, 1995, the Claimant was notified that a formal investigation was being scheduled to determine the Claimant's responsibility, if any, in a crossing accident that occurred on June 15, 1995 in Rockford, Illinois while the Claimant was operating a burro crane. On June 21, 1995, the Claimant was notified that he was being additionally charged with a violation of General Code of Operating Rule 1.5, Safety Instruction General Rule G and Company Policy.

A formal investigation was conducted on September 6, 1995, and it was determined that the Claimant was found guilty. Consequently, the Claimant was assessed a five actual working day suspension from service and a ten working day deferred suspension with a one-year probationary period.

The Claimant filed his appeal, challenging the Carrier's decision

The parties being unable to resolve the issue, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that the Carrier has not met its burden of proof that the Claimant was in violation of any rule justifying the imposition of discipline. The record reveals that there was a collision between the burro crane being operated by the Claimant and a motor vehicle at an intersection. However, the preponderance of the evidence elicited from the two employees at the scene indicates that the Claimant was operating his burro crane properly in line with all of the safety requirements. The burro crane was hit by a car driven by a very young driver, who was not carrying his license, who had loud music blaring out of the radio, and who attempted to leave the scene of the accident. Although one cannot be positive as to who was at fault in the actual accident, this Board must point out that the Carrier has the burden of proof to demonstrate by a preponderance of the evidence that the Claimant was in violation of safety rules or procedures that caused the accident.

The Carrier did not meet that burden and, therefore, it cannot impose any discipline. This Board has stated in the past that the simple fact that an accident has occurred involving a Carrier employee does not justify the discipline of that employee. The Carrier must meet its burden of proof and in this case it did not. It should be noted that the accident led to little or no damage to the vehicle and the Carrier equipment.

Since the Carrier has been unable to meet its burden of proof in this case, the claim must be sustained. The Claimant shall be made whole and the suspension and probationary period shall be removed from the Claimant's record.

AWARD

Claim sustained in accordance with the above decision.



PETER R. MEYERS
Neutral Member_____
Carrier Member_____
Organization Member

DATED: _____

DATED: _____