

SPECIAL BOARD OF ADJUSTMENT NO. 541

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

Erie Lackawanna Railway Company

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when Section Foreman Burdick was unjustly dealt with and assessed a penalty which was unwarranted, following a Hearing in the Trainmaster's Office at Salamanca, New York, on October 19, at 9:00 a.m., based upon charges that Claimant Burdick had violated Rules 1010 and 1027 of Rules and Instructions Governing the Use and Operation of track cars, effective October 1, 1964, and Rule 3001 of Safety Rules, Maintenance of Way and Structures Employees, effective July 1, 1964.
2. Carrier shall now reimburse Claimant for all days involved from October 11, 1967, until the date he was returned to service in his regular capacity as Section Foreman, and that his record be cleared of the charges as outlined in Carrier letter of November 17, 1967.

FINDINGS:

The discipline in controversy stems from an accident that occurred when a motor car under the supervision of claimant, a section foreman, was struck while it was standing on the main track near the Glass Plant, within Brockway, Pennsylvania, yard limits by the Brockway Extra that had arrived in the vicinity to perform assigned switching operations.

Claimant was working in the area and had left a red flag on the windshield of the motor car in the appurtenance that was provided for that purpose. According to claimant's uncontroverted testimony, he had worked frequently in the Glass Plant vicinity with his motor car for three years and had informed the Yardmaster's Office both the night before and on the very morning of the accident that he would be at that location on the day in question.

It is clear that he had not obtained express permission from the Yardmaster's Office to occupy the track that morning and that omission constitutes a violation of Rule 1010 Exception 3's provisions that warrants discipline. We are not impressed by Petitioner's theory that discipline is unwarranted where, as here, only minor damages result from the accident. In view of Carrier's enormous responsibility for safety, we are disposed to allow it considerable latitude in assessing discipline for safety rules infractions.

However, the measure of discipline meted out must depend on the nature of the violation and the record on which it is based and in the present case we are satisfied that no more than a fifteen day suspension is proper when all the evidence is taken into consideration. This record certainly provides no valid basis for, in effect, dismissing an employee from a supervisory position.

That these conclusions must be reached is quite apparent for a number of reasons. For one thing, the discipline is disparate for it does not appear that sufficient effort was made to explore the responsibility of the train crew for avoiding the accident since there are indications that it might have had the last clear chance to do so. For another, employees in the Yardmaster's Office knew claimant had worked in the same location with his motor car for a considerable time and had been told that he would be in that area on the morning the accident took place; these facts should at least have given Carrier occasion to investigate their responsibility in the matter, particularly in the light of the testimony of Conductor DeBoy that he always asked the Yard Office where the car was located each time his train, the Brockway Extra, worked in the Glass Plant vicinity.

Mr. DeBoy's testimony that the car could have been placed at a set-off near the point where the collision occurred is not persuasive since Claimant's uncontradicted testimony is that the set-off was not in good repair or sufficiently spacious in its present state.

It may be that these points, when properly investigated, would not be helpful to claimant but the record, in its present posture, is not sufficiently complete and clear to support dismissal from a supervisory position or more than a fifteen day suspension which is sustained since claimant, despite the record's defects, should have obtained express permission from the Yardmaster's Office even though it is altogether clear that the latter was under some obligations in all the circumstances to follow up claimant's statement that he would be in the Glass Plant vicinity that morning.

Carrier's contention that claimant's past record of service warrants the disputed discipline is unimpressive for there is no indication that he had ever received a suspension or other serious discipline on more than one occasion and that occurred over twelve years before the present situation arose.

In the light of this record, we will direct Carrier to offer claimant's immediate reinstatement to the section foreman position he occupied before his suspension, with backpay for the period beginning October 27, 1967, and ending on the date of such reinstatement less any and all earnings received from Carrier during that period.

AWARD: Claim sustained to the extent indicated above in Findings.

ORDER: Carrier is hereby ordered to make the above Award effective on or before December 13, 1974.

Adopted at Cleveland, Ohio, October 16, 1974.

/s/ H. M. Weston
H. M. Weston, Chairman

/s/ R. A. Carroll
R. A. Carroll, Carrier Member

/s/ A. J. Cunningham
A. J. Cunningham, Employee Member