

Award No. 46 & 47
Cases No. 46 & 47

SPECIAL BOARD OF ADJUSTMENT NO. 956

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employees
and
New Jersey Transit Rail Operations, Inc.

STATEMENT OF CLAIM

Claims by Maintenance of Waymen Pryor (Case No. 46) and Leidy (Case No. 47) for all time lost as a result of a collision that occurred between equipment that each of them was operating at the time.

FINDINGS

Each of the two claimants was operating a ballast regulator on closed track when they met in a head-on collision. Both men were immediately removed from service. They were subsequently dismissed after a hearing had been held on due notice. Carrier later reinstated both claimants to its service.

Petitioner maintains that dismissal was unwarranted and now seeks compensation for each of the two claimants.

Contrary to Petitioner's contention, we find no evidence of reversible procedural error on Carrier's part. it was not

unreasonable or in violation of any applicable rule to remove claimants from service before a hearing had been held in the matter. The accident was potentially a very serious one and there was at least some indication that it may have resulted from a lack of due care by claimants. If it had developed, after a hearing had been held, that they were not at fault, they would have been compensated for all time lost after their removal.

The record shows that Pryor was proceeding around a curve at 35 mph and Leidy at 15-20 mph just before the accident. We find no persuasive basis for disturbing Carrier's conclusion that claimants were operating the machines at excessive speed at the time in question. We are unimpressed by Petitioner's objection that there was no violation shown of any specific safety rule or speed regulation. There is no sound basis for this Board to substitute its judgment for that of Carrier in this matter. Proceeding in a reasonably safe manner and in the absence of negligence, claimants should have been able to avoid a head-on collision on a yard track on a dry autumn day.

The discipline imposed on claimants, as amended by Carrier, will be upheld. While dismissal was excessive disciplinary action, we will not interfere with Carrier's

holding that neither claimant is entitled to compensation for time lost in the present case.

AWARD

Claims in Cases No. 46 and 47 are hereby denied.

Adopted at Newark, NJ,

January

10, 1990

, 1989

Harold M. Weston, Chairman

Will B. M. Sy
Carrier Member

W. E. LaRue
Employee Member