

The First Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Engineer D. R. Carnahan, Central Division (Mankato District) requests that the five day (5) actual suspension issued on March 2, 1990 be completely removed from his record and that he be removed from the C&NW Discipline System. Engineer Carnahan also requests that he should be fully compensated for all time lost. Claim premised on BLE Rule 41, copy attached as Employees' Exhibit A.

Engineer Carnahan was investigated on February 27, 1990 and issued a five day suspension on March 2, 1990 under C&NW Discipline Notice No. 1330 on the following charge:

'Your responsibility in connection with the side collision and derailment which occurred on February 15, 1990 at about 8:00 p.m. while you were a crew member on Job 07 at Mankato, Minnesota.'

Copy of transcript attached as Employees' Exhibit B."

FINDINGS:

The First Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

A train Claimant was operating was involved in a sideswipe accident with a car which had rolled out and fouled the track he was operating on. After an Investigation into the incident, Claimant was disciplined with a five day suspension.

We have studied with care the transcript of the Investigation and do not find that it contains sufficient evidence that Claimant violated any operating rule or instruction or was responsible in any way for the collision.

While there are some comments that perhaps Claimant may have been operating without air on all cars within his train, these comments are inconclusive. Claimant may have been operating in accordance with accepted practices followed in the yard. Nonetheless, the evidence is inconclusive that even if all cars had air that Claimant contributed to the accident.

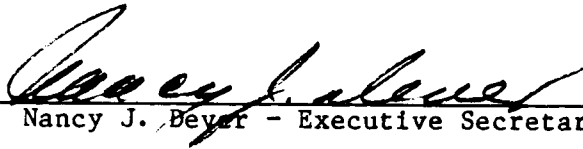
The transcript does not contain adequate evidence to support discipline. The Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October 1991.