

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30107
Docket No. SG-30423
94-3-92-3-178

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (former L&N):

Claim on behalf of Brother J.P. Montgomery, for five (5) days pay, at his pro-rata rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 55, when it assessed him discipline following an investigation." Carrier File No. 15 (91-14). BRS file No. 8550-CSXT.L&N.

FINDINGS:

The Third 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 employe 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.

At about 6:30 A.M. on November 27, 1990, Claimant, a Signal Maintainer, was driving a Carrier truck on a County road while on duty. It was dark and the road was wet and slick. At the Investigation, Claimant testified that he was traveling 30 mph which was 15 mph under the speed he normally travelled down this road.

Claimant was familiar with the road. Thus, he realized that he was approaching a precarious intersection. Claimant knew that

the road made a sharp 90 degree turn to the left and then, a few yards later, a similar 90 degree turn to the right. Claimant related that at about 300 yards before this jog in the road, he tried to slow the truck down but the brakes locked. He then put the truck in neutral and pumped the brakes but the vehicle still only slowed down to 20 mph by the time he reached the consecutive right angle turns.

As Claimant was trying to navigate the jog, the truck slid into a ditch and landed on its side. Fortunately, Claimant was not injured. The State Police filed a report of the accident but did not cite Claimant.

At the Investigation, Claimant contended that he complied with all Safety Rules. He could not explain why the truck did not slow down. Even though Claimant wrote on the accident report that the truck brakes locked, the Carrier failed to conduct a mechanical inspection of the vehicle.

Following the Investigation, the Carrier suspended Claimant from service for five days because he allegedly violated Safety Rules and negligently lost control of a Carrier vehicle.

A mechanic at a local dealership provided a statement that the truck's brakes were not functioning properly. More specifically, the Assistant Service Manager attested that the front brake pads were worn and that the rear axle grease seal was leaking. He concluded that the combination of these two problems could easily have caused Claimant to experience braking difficulties.

On the property, the Carrier never refuted the substantive content of the Assistant Service Manager's statement. Therefore, this Board is left with the uncontroverted fact that the truck's brakes were defective and such condition could have caused the accident. Since the Carrier failed to inspect the vehicle after the accident, it is now estopped from claiming that defective brakes could not have been a contributory cause of the accident.

In addition, the Carrier never explained exactly how Claimant was negligent or what else he could have done to maintain control of the vehicle. The Carrier has the burden of proof. The Carrier must submit substantial evidence showing Claimant's negligence. It may not assume negligence simply because an accident occurred. Since the Carrier did not come forward with any proof that the accident was Claimant's fault, the Claim is sustained to the extent provided in Rule 55(a).

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin / lw
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.