

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward No. 4957
Docket No. 4956
95-4-94-4-3

The Fourth Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(United Transportation Union -
(Yardmasters Department
PARTIES TO DISPUTE: (
(CSX - Sea/Land Terminals, Inc.

STATEMENT OF CLAIM:

"Claim and request that all discipline (30 days over head suspension) assessed Chief Yardmaster M. D. Duffy as the result of the investigation held September 15, 1993, be removed and his record cleared of all mention thereof, and that Mr. Duffy be paid for any subsequent time lost as the result of the discipline assessed."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

By letter dated August 3, 1993, Claimant was ordered to attend an Investigation to determine facts and responsibility for damage to a Carrier vehicle "...while allegedly parked in the crane path." Following postponements, the Investigation was held September 15, 1993 and the Claimant thereafter notified that he had been found guilty as charged.

The Board's review of the on-property record indicates the following events and facts are not in dispute. At approximately 8:45 A.M. on July 28, 1993, the Claimant stopped his Company vehicle to discuss a hydraulic leak with Carmen working on a track near the crane. During that discussion the crane was moved and struck the Claimant's vehicle.

We have fully reviewed both the Organization's and Carrier's positions and find the following. The Carrier has the burden of proof to demonstrate with substantial evidence that the Claimant parked his vehicle in the crane path. The evidence presented on the property by the Carrier consists of the testimony of two Supervisors alleging that the Claimant stated that he was in the crane path. Close inspection of the testimony does not bare this out. In fact, the Termination Supervisor stated that the Claimant "...didn't directly say crane path area."

The Board scrutinized this record for any probative evidence to conclude that the Claimant was in the crane path, rather than reports from memory on statements made. There is no such evidence. Neither Supervisor was at the scene of the accident. There was no written report taken of the Claimant's remarks. The Claimant clearly denied that he was in the crane path when struck. The pictures presented are inconclusive. The only independent testimony presented at the Investigation was by a Carman. He reported that he heard no alarm from the crane as it moved and most importantly, that the Claimant "...wasn't in the crane path."

This Board is well aware that it has no authority to resolve issues of credibility or contradictory testimony. Awards too numerous to mention have enumerated our appellate role. We stand here to determine if there exists substantial probative evidence to reach a conclusion of guilt. The weight given by the Carrier to its evidence is not substantial. The record is based on presumption, rather than fact. The Board finds the record is inadequate to support a conclusion of guilt.

While the Carrier must be attentive to safety and require all employees to be diligent, the case at bar lacks the clearly established facts to prove that Claimant violated safety procedures.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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By Order of Fourth Division

Dated at Chicago, Illinois, this 31st day of January 1995.