

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13175

Docket No. 13063

97-2-95-2-82

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(International Brotherhood of Firemen and Oilers,
(AFL-CIO System Council No. 6

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“1. That under the current and controlling agreement, Fireman and Oiler J. S. Edmonds, ID# 094496, was unjustly suspended from service on August 1, 1994 through August 7, 1994, five (5) work days.

2. That accordingly, Fireman and Oiler J. S. Edmonds be made whole for all lost time, with seniority rights unimpaired, the payment of 10% interest rate added thereto and his personal record be expunged of any reference to this discipline.”

FINDINGS:

The Second 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 were given due notice of hearing thereon.

The Claimant was subject to an Investigation on the charge of:

“... responsibility in connection with an accident on June 22, 1994 when a frontend loader you were operating struck a shop clearance barrier placed above the roadway on the east end of the Main Office parking lot access road.

You are charged with gross negligence when you operated shop work equipment in a careless manner causing an accident which resulted in damage to company property.”

Following the Hearing, the Claimant was **“found guilty as charged of gross negligence”** and assessed a five-day disciplinary suspension.

The Organization contends the charge against the Claimant was improper in that it was not specific and did not allege violation of **“a specific rule or safety policy.”** The Board does not agree. The charge specifies the incident by date and location, and the Claimant and his representative were sufficiently aware of the circumstances. Given the nature of the incident, the absence of quotation of a specific rule or policy did not make the charge insufficient.

There is no dispute that the Claimant's vehicle, or its load, did strike and bend an overhead low clearance sign. While the sign was readily repaired and later removed altogether, this does not lessen the possibility, as stressed by the Carrier, that personal injury and/or more severe damage might have occurred. As the Organization points out, however, the Claimant was handling an awkward load and was simultaneously taking other safety precautions. The description of the negligence as **“gross”** is perhaps overstated. The Carrier's Report of Investigation/Board of Inquiry concluded simply that the Claimant was **“negligent”** when he failed to lower the backhoe arm, causing it to strike the low clearance barrier.

The Carrier, however, initiated in March 1994 a written safety policy relating to, among other matters, **“vehicle accidents.”** The policy is specific as to progressively more severe disciplinary action, with the first step being counseling and training and the second step a five-day suspension. In March 1994, the Claimant received counseling in connection with a trackmobile accident. The incident here under review occurred only three months later. The **“negligence”** involved here, standing by itself, would have warranted a less severe penalty. Given the effectuation of the Carrier's policy, however, the Board has no basis to modify the penalty for this second incident within a three-month period.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 29th day of October 1997.