

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Adolph E. Wenke, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(1) That the Carrier acted in an unfair and improper manner in dismissing from the service E. B. Morris, Machine Operator, Arkansas Division, account his Bolt Machine Number 2072 being struck by Extra Train Number 2312 at MP 114, Pole 6, north of Junction City, Arkansas, about 9:35 A. M., March 9, 1948;

(2) That Machine Operator E. B. Morris be returned to the service with full seniority rights and vacation privileges unimpaired and be reimbursed for all monetary loss suffered by him account of the Carrier's improper action.

**OPINION OF BOARD:** This is a discipline case that involves the dismissal from service of E. B. Morris, a machine operator. The System Committee contends Carrier acted in an unfair and improper manner in dismissing claimant from the service and asks that he be returned to service with seniority rights and vacation privileges restored and with reimbursement of all monetary loss suffered by reason thereof.

The record discloses that on March 9, 1948, at about 7:10 A. M. claimant, Elias B. Morris, a Bolt Machine Operator on the Arkansas Division operating Bolt Machine No. 2072, filed an order with the Agent at Junction City, Arkansas, covering the location of his day's work with the bolt machine and at the same time obtained his lineup. Thereafter the section foreman's wife transported claimant and Kido Branch, a section laborer assigned to work with claimant, to a point about one mile north of Junction City to commence the day's work. A man is always assigned to help the operator of a bolt machine because it requires two men to handle it, particularly in moving it on and off the tracks. About 9:35 A. M. the bolt machine was struck and damaged by the engine of Extra Train No. 2312. The accident occurred at MP 114 Pole 6 north of Junction City.

Claimant was suspended on that day pending investigation to determine the facts and place responsibility in connection with the accident. An investigation was held in the Trainmaster's Office at El Dorado, Arkansas, at 2:00 P. M. on Monday, March 15, 1948. On March 22, 1948, claimant was notified by mail of the Carrier's decision to the effect that he had been dismissed from service because of his responsibility in the striking and damaging of Bolt Machine No. 2072 by Extra Train No. 2312 on March 9, 1948, north of Junction City, particularly referring to the violation of Maintenance of Way Rules 99, 126, and 371.

The investigation brought out that the weather at the time of the accident was cloudy and the atmosphere smoky and foggy; that claimant knew he was working in a dangerous area, because of curves; that he knew, from his line-up, that Extra Train 2312 was late and had not passed; and that he did not put out torpedoes, slow flags, or any other warning signals. In fact, it is apparent that he had no signalling equipment with him as the only flagging he did was by waving a glove. Admittedly he failed to comply with instructions given him by the Division Superintendent to always use slow flags or boards. The evidence establishes and the claimant admits that he failed to comply with Carrier's operating rules, both general and special, and particularly Rules 99, 99 (c), and 126.

As to the contention that Carrier did not comply with Rule 17 (a), which provides "A decision will be rendered within ten (10) days after the completion of the hearing," we find it did render its decision on March 22, 1948, and notified the parties thereof by mail.

It appears the carrier has returned claimant to the service and this award is not intended to nor should it affect the reinstatement.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier has not violated the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois this 12th day of September, 1949.