

Award No. 13399

Docket No. MW-14927

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that;

(1) The dismissal of B&B Foreman J. V. Marola, effective with the close of work on September 24, 1962, was without just and sufficient cause and on the basis of unproven charges. (Carrier's File 130-187-19).

(2) Mr. J. V. Marola be reinstated to the position of B&B Foreman with seniority, vacation and all other rights unimpaired and that he be reimbursed for the earnings lost subsequent to September 24, 1962.

Note: The hearing transcript comprises 109 pages. This Division has recommended that only one party submit the transcript as part of the record in cases of this kind and has suggested that the carrier will ordinarily be the party submitting the transcript. Because of the unusual length of the transcript involved here and because the carrier presumably has the master sheets available for ready duplication, the Employees will not submit the transcript but will expect the carrier to submit a true transcript as part of its submission for the record in this case.

OPINION OF BOARD: In the instant dispute self-propelled crane No. 199605, operating under the direction of the Claimant, fouled the main track with its boom and appurtenances and as a result was struck by an eastbound freight train at Corona, California on September 13, 1962.

The sole issue involved is; did the presence of a work train crew, consisting of a conductor and a brakeman, assigned to the operation in which the crane was engaged in order to provide flag protection, relieve the Claimant of the responsibility to see to it that proper flag protection was afforded?

Under the rules of the Maintenance of Way and Structures Department of the Carrier, the duty was imposed upon the Claimant to see to it that

"trains and engines must be fully protected against any known conditions which interferes with their safety", and nowhere in the Rules or in the record may be found any Rule or statement which relieves a B&B Foreman of this responsibility.

It is the finding of this Board that Claimant failed to see to it that the work train crew had furnished adequate flagging protection before the main track was fouled, and while it is true that both members of the work train crew were indeed guilty of negligence, this Claimant may not, in the light of the paramount responsibility imposed upon him, exculpate himself by pleading the negligence of others.

We find no error in the proceedings and the Carrier having exhibited no bias or other reversible fault, it follows that the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Agreement was not violated.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 26th day of February 1965.