

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20671

Docket Number MW-20610

William M. Edgett, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Burlington Northern Inc.

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

(1) The suspension of Work Equipment **Operator** L. M. Jacobsen September 22 through October 1, 1972 for **alleged**"violation of Rule 828" was without just and sufficient cause and on the basis of unproven charges (System File **33-R-3/MW-20(b)** 2-16-73).

(2) Work Equipment Operator L. M. Jacobsen be compensated for all wage loss suffered and his record be cleared as per Rules 40-G.

OPINION OF BOARD: Claimant was instructed by his Foreman to excavate between North Hump tracks **#11** and **#12** in **Hobson** Yard on August 11, 1972. He left his machine to observe the work to see if he could accomplish it more effectively by re-positioning it. While he was off the machine the boom, which was fouling track **#11**, was struck by a cut of cars.

Claimants' defense, to a charge **that** he had not complied with Rule 828, is that he assumed that his Foreman had provided protection when he was assigned to work **in** that area. The question before the Board is whether such reliance **constitutes compliance** with the Rule. Rule **828 reads:**

"Roadway Machines and Work Equipment

"828. Pile Drivers, cranes, draglines, dozers, and (similar) equipment, either on-track or off-track must not foul a track until protection has been provided in both directions on tracks affected. Before a train or engine is permitted to pass, operations of such equipment **must** be stopped and booms or other projecting parts must be secured to clear the track to be used."

Obviously protection should have been provided. Claimant argues that it was not his responsibility under the rule to **know** that

it had been. That argument is not accepted. Under the Rule Claimant was responsible for either providing protection or ascertaining that it had been provided. He made no inquiry of his supervisor or any other person. He did not advise the proper persons that he was working on tracks #11 and #12. His own safety was at stake since when he operated his machine he necessarily fouled track #11. It was not unreasonable under the circumstances to hold him responsible for compliance with Rule 828.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:



Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1975.