

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22564
Docket Number MW-22377

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(The **Chesapeake** and Ohio Railway **Company**
(Southern Region)

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

(1) The disqualification of L. G. Ward as an **Equipment**
Operator was without just and sufficient cause and was capriciously
imposed (System File **C(So)-D-344/MG-1709**).

(2) Claimant L. **G. Ward's** seniority as a machine operator
shall be restored unimpaired and he shall be paid for all time lost from
September 24, **1976** up to the date he is restored at the machine
operator's rate."

OPINION OF BOARD: On September 24, **1976**, claimant was employed as a
machine operator. **In** that capacity, he was
assigned to **move** a Tie Shearer machine over the main track as the lead
machine in a convoy of machines being moved between Woody Station and
Meadow Bridge on Carrier's **Sewell** Valley sub-division of the **Hinton**
Division. During this main track **movement**, **claimant** lost control of
his machine **after** which it ran unattended for approximately five **(5)**
miles where it collided with a multiple **tamper machine** operating in the
vicinity of **Claypool**, West Virginia, injuring the two **(2)** employees who
were working with the **tamper** and destroying both pieces of equipment.

Claimant was subsequently **required to** attend a **hearing** on
October **7, 1976** in connection **with** this incident, after which he **was**
disciplined by **being** disqualified as an equipment operator.

The testimony in the **hearing** record, including claimant's own
testimony, clearly establishes that, by his actions and/or lack of
action, he was **primarily** responsible for the machine "run-away" and
resultant collision.

In **addition**, we have given serious consideration to our
function as an appellate tribunal in situations of this kind. And,
based upon the total fact situation which exists in this case, including

the fact that there is no evidence in the record of any prior derelictions of duty attributable to claimant, we do not feel that total and permanent disqualification as **equipment** operator is warranted.

Therefore, while we are **denying** the claim as presented in this case, we nonetheless rule that claimant should be afforded the opportunity to make application for **equipment** operator positions in the future, subject, of course, to his ability to qualify on the particular piece of equipment, and thereby reestablish equipment operator standing.

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 Mt violated.

A W A R D

Claim disposed of as per **Opinion** of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 16th **day** of October **1979**.

