

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **25297**
Docket Number MU-25179

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Consolidated Rail Corporation
(Formerly The New York, New Haven & Hartford Railroad Company)

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

(1) The discipline (reprimand) imposed upon Machine Operator R. **E. Openshaw** for alleged responsibility in connection with damage to the Speed Swing on July 23, 1981 was arbitrary, unwarranted and on the basis of unproven charges (System **Docket NH-93**).

(2) The reprimand referred to in Part (1) hereof shall be removed from the claimant's personal record.

OPINION OF BOARD: An investigation was held on September 8, 1981, to determine whether Claimant was responsible for damaging the **Pettibone** Speed Saving Machine on July 23, 1981. Claimant was employed as a District Power Machine **Operator** at the time of the incident and was performing surfacing **work** alongside the shoulder of track in the vicinity of Route 106 crossing at Westdale, Massachusetts. He was later informed by letter, dated August 14, 1981, that he was found guilty of the asserted charge and a formal letter of reprimand was entered into his personal record. This disposition was appealed.

In defense of his petition, Claimant argues that there is no evidence to prove that he failed to check the oil pressure gauge while **operating the** machine; and no evidence to show that he damaged it by running the machine over a small tree. He contends that he is not responsible for the equipment damage and maintains that the investigative record substantially supports his position.

Carrier argues that the Speed Saving Machine sustained a broken oil line when he carelessly ran the machine over a small tree. It **avers** that he continued to operate the equipment, notwithstanding the rapid depletion of the machine's oil supply; and asserts that his lack of diligence contributed to the extensive damage. It contends that the testimony of its witnesses clearly establishes that he operated the machine in a palpably careless fashion and thus, he **was** responsible for the resulting damage.

In **our** review of this case, **we** concur with Claimant's position. While the machine broke down while Claimant was using it, we have no concrete specific cause-effect evidence that it was caused by his running the equipment over a tree. Work Equipment Foreman Barry Matthews testified that there was no evidence on the underside toward the back of the machine that it may have struck a tree; and indicated that a tree stub **34-36"** high, **6"** in diameter would not have been able to break the oil line, given the location of the oil line. This assessment contradicts Assistant Track Supervisor Brett **Rekola's** testimony which strongly

infers that a split and bent over tree stub comporting with these measurements was linked to the machine's operation. Road Mechanic Michael Edward Cutter could not state what caused the oil fitting to break, although he opined that it could have been caused by vibration as well as by a tree, if the tree could have *got through it'. **Upon** this record, which does not persuasively establish that Claimant carelessly operated the **Pettibone** Speed Saving Machine and thus was directly responsible for the damaged equipment, the **Board** is constrained to sustain Petitioner's claim. The record is too inconclusive and disjointed to support a finding of operational negligence.

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 violated:

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.