

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26024
Docket Number MW-26077

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

1. The ten (10) days suspension from service imposed upon Machine Operator R. O. Jackson, Jr., for alleged negligence in the operation of his machine was arbitrary, without just and sufficient cause and on the basis of unproven charges (System File #1983-1/013-30).

2. The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: An Investigation was held on September 22, 1983, to determine Claimant's responsibility, if any, in connection with damage to a signal post on September 7, 1983. He was operating a Ballast Regulator when the incident occurred. Based on the trial record, Carrier concluded that he was negligent in the operation of this equipment and suspended him from service for ten days (October 10, 1983, through October 21, 1983). This disposition was appealed in accordance with the applicable provisions of the Controlling Agreement.

In defense of his position, Claimant contends that he took every possible precaution to insure that the bucket on the equipment was sufficiently distant from the signal post, and disclaims any responsibility for the mishap. He maintains that a piece of metal became lodged in the bucket, and as such, struck and damaged the signal post.

Carrier argues that irrespective of whether a piece of metal was lodged in the bucket, Claimant was responsible, nevertheless, for insuring safe clearances when he moved his equipment past structures adjacent to or along the right of way. In effect, it asserts that he cannot absolve himself from responsibility, specifically since he was solely in control of the ballast regulator.

In considering this case, we concur with Carrier's position. As the Equipment Operator, Claimant had control of the Ballast Regulator and was implicitly positioned to avoid any unnecessary impacts. On this point, we have carefully reviewed his testimonial version of the incident, but we are not convinced that he was placed in such an untenable operational position that damage to the signal post was excusably unavoidable. Rather we believe he could have exercised more caution. It might well be that the Track

Supervisor and the Signal Supervisor were not present when the signal post was struck, but this presumptive limitation does not preclude a competent after the fact cause-effect assessment. From the record, it strongly appears that Claimant was negligent when he operated the equipment and, accordingly, given his conduct, the discipline assessed was appropriate and consistent with the normative standards of corrective discipline. We will deny the claim. (See Third Division Award Nos. 15880, 24432, 24498, et.al.).

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

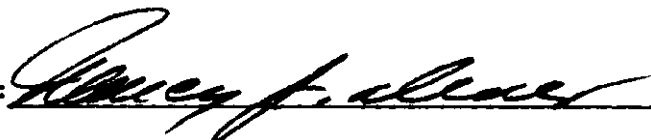
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.

