

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26047  
Docket Number MW-25788

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Consolidated Rail Corporation (formerly Penn Central  
(Transportation Company)

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

1. The five (5) days of suspension imposed upon Boom Truck Driver M. D. Lane for alleged 'Violation of Rule 3241' and for alleged 'unsafe personal habits' was without just and sufficient cause and on the basis of unproven charges (System Docket 739).

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

OPINION OF BOARD: While tightening Heel Block Bolts on a Crossover Switch at Fairhope Interlocking on August 24, 1981, the left liner projector on the front buggy of the tamper struck Claimant's knee. Claimant suffered a sprained left knee.

The record reflects that Claimant was not alert even though he realized that the Tamper would be moving toward him. Also, Claimant was aware that the projector arm protrudes outward beyond the ties. Thus, the Carrier presented substantial evidence proving Claimant was careless. Since his past record demonstrates that Claimant was accident prone, we do not find any justification for reducing the assessed penalty.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act as approved June 21, 1934;

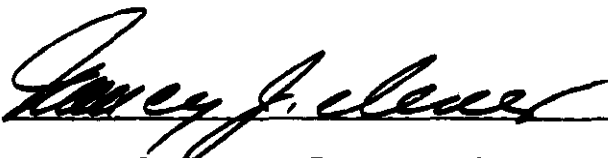
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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 11th day of June 1986.