

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26198
Docket Number MW-26246

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

1. The thirty (30) days of suspension imposed upon Trackman R. J. Panada, Jr. for alleged violation of Safety Rules 3336 and 3342 when he allegedly 'failed to lower the boom on truck G8441 resulting in damage to boom', was excessive and unwarranted (System Docket CR-541-D).

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: The Claimant was charged with violation of Carrier's Safety Rules 3336 and 3342 on October 26, 1983. According to the Notice of Investigation the Claimant allegedly failed to lower the boom on truck G8441 which he was operating on that date which resulted in damage to the truck when it struck an overhead bridge at about 9:30 A.M. The bridge was located on Route 17, at the convergence of that highway and Guile Hollow Road in Hinsdale, New York. The damage to the truck was estimated to be in excess of \$12,000.00. After the Hearing was held on November 11, 1983, the Claimant was advised that he had been found guilty as charged and he was assessed a 30 day suspension.

The Rules at bar read as follows, in pertinent part:

"Rule 3336: Always make a walking circle inspection before entering your vehicle. This to insure there are no obstructions that would prevent safe movement of the vehicle. Especially, check all blind spots. If conditions permit, move vehicle forward promptly. Limit any backup to only the necessary distance.

Rule 3342: Vehicle driver is responsible for the safe and proper operation of the vehicle in his charge and the safety of the occupants. . . ."

A review of the record shows that the Claimant had a license to operate the vehicle in question and that he had previous, if limited, experience operating such types of vehicles. During the Hearing, the Claimant testified that he

had driven this particular vehicle about "a week's time, (all) added up." Prior to moving the vehicle on the day in question, the Claimant also testified that he had not made a complete walking inspection of the vehicle and did not "... notice that the boom was up." Because of this he did not secure the boom down prior to driving the truck to the next location and he thus damaged the truck when he attempted to negotiate it under the Route 17 bridge.

On merits, there is sufficient evidence of probative value in the record to warrant the conclusion that the Claimant was in violation of the Rules at bar. During the appeals on property the Organization contended that "... the Claimant was not qualified to operate a boom truck and the Carrier should not have assigned him to operate this vehicle." The record does not support this position. Some, if limited, experience operating a given type of equipment is not the same as lack of qualification. The problem originated not because the Claimant did not know how to operate the equipment in question, but because he did not make the proper safety inspections prior to operating it. The instant Claim cannot be sustained.

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 24th day of November 1986.