NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26211

THIRD DIVISION Docket Number MW-26125

John E. Cloney, 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 ten (10) days overhead suspension imposed upon Machine Operators C. A. Britt and W. L. Park for alleged failure to properly operate machines PTF 717 and BRD 522, respectively, on August 11, 1983 was without just and sufficient cause and on the basis of unproven charges (System File C-D-1929/MG-4284).

2. The claimants' records shall be cleared of the charges leveled against them and they shall be compensated for all wage loss suffered if any."

OPINION OF BOARD: On August 31, 1983, the Claimants attended an Investigation after being charged with failure to properly operate their machines on August 11, 1983, resulting in damage.

At the Hearing Claimant Park, an employee since 1974 and a Machine Operator since 1978, stated he was the Machine Operator of Ballast Regulator BRD522 on August 11, 1983. He had operated it since May, 1983, and similar equipment since 1979. He stated the machine was damaged when he came backwards through an area he had plowed through four times previously. The plow caught a rail which was not spiked at the end and had moved. Park stated the damage could have been avoided if the switch and rail had been properly removed. He stated he did not have a safe place to work because of scrap and rail in the area which he had seen before beginning to operate. He admitted if he had raised the front plow the rail would not have been struck. Supervisor, Work Equipment Miller stated normal procedure for Ballast Operators is to be aware of obstructions in the track.

Britt, a Laborer, had operated the Junior Tamper PTF717 for abut 3 hours and 45 minutes that day before the damage to it. He was operating it because the regular Operator was on vacation. He has no Operators rights. He received instructions from Foreman Conrad before operating it. He testified damage occurred when he tamped the last tie before a crossing. He was moving the Tamper to the other side of the crossing. The head was down and hit the crossing. He did not lock the heads up as he could have. Britt stated the damage could have been prevented by having a qualified Operator on the machine. He did not know to lock the heads before moving over a crossing.

The Foreman testified he briefly instructed Britt with the intention of getting back and going into more detail. He also stated the area had an overabundance of scrap, turned rails, tie plates and angle bars and he had brought this to the attention of the Assistant Supervisor - Track.

Damage to the BRD522 amounted to $6,090.58. Damage to the PTF totaled $821.24.

After the Investigation both Claimants were notified "it has been found that you ware at fault for failure to properly operate your machines" and the "discipline assessed is ten (10) days overhead suspension for a period of six (6) months."

The Organization contends Carrier relies solely on damage to the machines as evidence that Claimants violated Rules. Carrier contends the evidence shows Claimants didn't follow proper procedures in operating their equipment. Accordingly Carrier's discretion in assessment of discipline should not be disturbed absent a showing that it was malicious, vindictive or arbitrary.

This Board agrees substantial evidence was produced at the Hearing to allow Carrier to conclude there was a failure to properly operate the machines in question. As to Claimant Britt, however, we believe there are mitigating circumstances. He was not an Equipment Operator. He had very little training and had operated the machine for a total of slightly more than three hours. The Foreman admits he only briefly instructed Britt, intending to go into more detail later. Britt testified he didn't know he should lock the heads at crossings and that was not contested. In view of these mitigating circumstances, we shall require the overhead suspension be expunged from the record of Claimant Britt.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.