

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26354
Docket Number MW-26430

Edward L. Suntrup, Referee

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

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

(1) The thirty (30) days of suspension imposed upon Machine Operator F. Adams for alleged violation of Conrail's Safety Rules **3302D** and 3273 on December 3, 1983 was without just and sufficient ^{cause} and on the basis of unproven charges (System Docket CR-661-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 advised on December 21, 1983, to attend an **Investigation** to determine facts and place responsibility, if any, in connection with the following:

"Damage to Track Car X1074 and Tamper ME4051 due to collision which occurred approximately 375 feet North of Porter switch on the **Delmarva** Secondary within yard limits at **9:15** AM on December 3, 1983, as a result of your failure to properly control the movement of Tamper ME4051 while following Track Car X1074, in violation of Rule **3302D**, Conrail's Safety Rules for Maintenance of Way Employees.

Violation of Rule 3273, Conrail's Safety Rules for Maintenance of Way Employees, Form **S7-C**, thereby causing damage to a **tamping** head on Tamper ME4051 when it struck the switch stand on the **Deemer** Steel Switch, MP 6.7, on December 3, 1983, due to your failure to have the head properly secured while traveling."

After the **Investigation** was held on January 5, 1984, the Claimant was advised that he had been found guilty of violating the Rules at bar and he was assessed a thirty (30) day actual suspension. The Rules in question read, in pertinent part, as follows:

Rule 3302(d):

"When operating self-propelled equipment:

* * *

- (d) Reduce speed and give warning if person or animal is close to equipment or machine, or is near track, and stop before hitting person, animal or obstruction:

Rule 3273:

"Movable work parts of hoisting equipment or of self-propelled or other equipment must be secured in 'UP' or otherwise 'CLEAR' position as soon as work is stopped and before **travelling.**"

At the time of the alleged incidents the Claimant was a Machine Operator assigned to operate Carrier's Tamping Machine No. ME4051. According to testimony given at the Investigation by Carrier's witnesses Track Inspector F. Hood was operating Track Car No. X1074 North on the Carrier's **Delmarva** Secondary track on the morning of December 3, 1983, and he was being followed by the Claimant who was operating Tamper ME4051 cited above. At a point some 375 feet North of the Porter Station Switch the Track Inspector stopped his Unit short of a highway grade crossing. According to testimony by this Inspector the Claimant was some 600 feet behind him when the Inspector made this stop. Despite attempts by the Inspector to signal the Claimant to stop to avoid a collision, Unit **ME4051** operated by the Claimant nevertheless collided with Unit X1074. As a result the latter was derailed and damaged and Unit ME4051 was also damaged. The Equipment Supervisor who inspected Unit ME4051 after the collision testified at the Investigation that he could find no problem with the brakes on this piece of equipment despite the Claimant's testimony that the brakes had failed. There is sufficient corroborating evidence of probative value in the record to warrant the conclusion that the Claimant was, therefore, negligent and that he was in violation of Rule 3302(d). The record also shows that as a result of the damage sustained by Unit ME4051 the Tamper head fell off the frame later when it was being operated by the Claimant after it had then hit a **Deemers** Switch target. Such would not have happened if the head on the Tamper had been properly secured in accordance with the requirements of Rule 3273.

On the basis of the record taken as a whole there is sufficient evidence of probative value to warrant the conclusion that the Claimant was guilty as charged on both counts. The 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

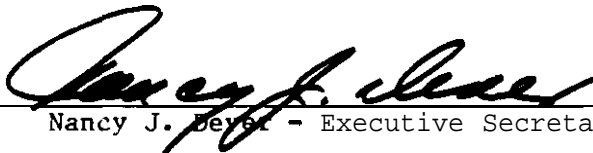
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.