

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26364  
Docket Number MU-26966

John E. Cloney, Referee

(**Brotherhood** of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Houston Belt & Terminal Railway Company

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

(1) The dismissal of Machine Operator K. D. **Lavergne** for alleged responsibility in **connection** with the derailment of Machine No. 156 and damage to Hughes Tools Building on or about January 9, 1985, resulting in a personal **injury** to Mr. G. V. **Puga**, was unreasonable and unwarranted.

(2) The **claimant** shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled **against** him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was in charge of Machine No. 156, a Tie Crane, on January 9, 1985, when it derailed and damaged a Hughes Tool Building.

From an **Investigation** conducted on January 24, 1985, it appeared that Machine Number 156 was the last of a group of machines moving from the main track to a **stub** track. At least **three** eye witnesses **testified** Claimant was operating **the** machine **too** fast for conditions. One of the witnesses was riding the machine with **Claimant** and told Claimant **to** "take it easy." That **witness**, fearing collision, finally jumped from the machine and injured himself. **Thereafter** **the** machine derailed and the crane boom struck **the** Hughes Building. Several witnesses testified the tracks were slippery due to wet grass. Claimant denies **fault** and **contends** the brakes failed and that he derailed because he hit **something** on the rail, not because of speed. Two **witnesses** had checked the brakes at the scene on the day of the accident and a Machinist checked **them** the next day. All agreed the brakes were operative.

Claimant **attributed** the **testimony** of witnesses **to** the fact that "that gang around me . . . everybody is trying **to** cut each other throats."

Claimant, who had been employed since 1978, had been discharged on September 27, 1984, and **returned** on a twelve month **probationary** basis on September 28, 1984.

On February 6, 1985, Claimant was notified of his dismissal, effective immediately. Throughout handling of **the** Claim on the property Carrier had maintained:

"The charges were clearly supported . . . and the assessment of dismissal was not excessive . . . for the nature of the violation and in consideration of his previous work record."

This Board agrees.

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;

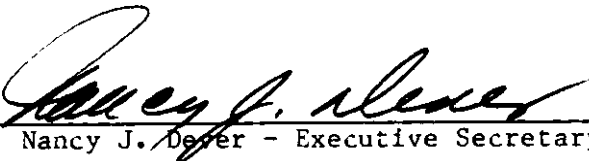
That this Division of the **Adjustment** Board has jurisdiction over the dispute involved herein; and

That the Agreement was 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 25th day of June 1987.