

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Delaware and Hudson Railway Company

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

(1) The fifteen (15) day deferred suspension imposed up" Bus **Driver/Trackman** M. Carter for alleged '... failure to comply with GTI Safety Rules GR-A, SE-10 and S-31.' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File **BMWE-12-86**).

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

FINDINGS:

The Third Division of the Adjustment Board up" the whole record and all the evidence, finds that:

The carrier **or** carriers and the **employee or** employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction **over** the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

By letter dated October 23, 1985, Claimant, a bus **driver/trackman** with approximately 16 months service, was directed to report for a Hearing in connection with the following charges:

- "1. Causing personal injury to James Cooper from a blow he received to the head from a maul you were using to apply rail anchors at Oneonta N. Y. on October 22, 1985.
2. Your direct failure to comply with GTI Safety Rules GR-A. SE-10 and S-31."

The involved Safety Rules read as follows:

Safety Rule GR-A

"**Employees** must be conversant with and obey all rules and special instructions."

Safety Rule SE-10

"When handling hammer, maul, pick, shovel, etc. be sure there is sufficient **room to do so** without striking anyone or anything."

Safety Rule S-31

"Before and while working below, above or near one another, employees in each position must notify the other of their whereabouts and make adequate provisions for each other's safety. Standing on anything which makes one's position insecure is prohibited."

Following the Hearing, which was ultimately held on November 21, 1985, Claimant was assessed a 15 day deferred suspension. The record contains substantial probative evidence in support of the Carrier's determination that Claimant was responsible as charged. Claimant admitted that it was his responsibility, when using a maul, to insure there is sufficient distance between himself and fellow employees so as to avoid injury to himself or others. Claimant's failure to position himself a safe distance away from his co-worker resulted in the latter's personal injury.

Over the years, all Divisions of this Board have consistently ruled that employee responsibility cannot be avoided by shifting the blame to supervisors **or** other employees. Each one of us must accept and answer for **our** own actions and job performance. (See Second Division Awards 9151 and 6538.)

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.