

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Southern Pacific Transportation Company (Easter" Lines)

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

(1) The thirty (30) demerits imposed upon Machine Operator J. M. Rodriguez for alleged violation of Rules 'A', 'I' and 'M243', **was** arbitrary, without just and sufficient cause and in violation of the Agreement (System File MW-86-29/446-42-A).

(2) The claimant's record shall be cleared of the charges leveled against him, the thirty (30) demerits shall be removed from his record and he shall be compensated for any wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon 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.

On January 3, 1986, the Carrier sent a letter **to** the Claimant, **which** read as follows:

"At approximately **11:50** AM on November 25, 1985, you were assisting as driver helper on Motor Crane SPO 218.

Your assigned **duties were to assist Motor** Crane Operator A. V. Lopez in driving and **manuvering** (sic) the crane in and around **track** panels moving rail from one area of the panel yard to another. After several trips (15 **or** 20), you allowed the rear of the crane to strike and run **over** the track panels. This resulted in extensive damage **to** the cab of the crane in the amount of **\$1,000.00** and a near personal injury

to Mr. A. V. Lopez who was making every attempt to get your attention to stop the machine. This is in violation of that part of General Rules A and I of the Southern Pacific Rules Maintenance of Way and Structures and Automotive Equipment Rules M243 which I quote to you below:

'A. Safety is of the first importance in the discharge of duty. Obedience to the rules is essential to safety and to remaining in service.'

'I. **Employees** must exercise care to prevent injury to themselves **or** others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.'

'M243 -- No motor vehicle is to be set in motion until it is known that the way is **clear**. Care **must** be exercised in parking and driving, either on **or** off the right of way, to avoid damage to equipment **or** injury to **occupants**. If there is a possibility of damage to equipment **or** injury to occupants due to condition of route traveled account presence of concealed obstructions or holes, movement must not be made until investigation indicates that the route is safe. It must be know" that vehicle will clear all overhead restrictions before passing under same.'

For the above violations, your personal record is hereby being assessed thirty (30) demerits."

The Claimant requested a formal Investigation which was held on February 27, 1986. The Claimant was present and represented by the Organization. The Investigation was conducted in a fair and impartial manner.

Following the Investigation, the Carrier affirmed its decision imposing the discipline of thirty (30) demerits.

Upon due consideration of all the evidence in the record, we find the evidence sufficient to support the Carrier's charge; however, we find the discipline assessed to be excessive. The thirty (30) demerits shall be reduced to fifteen (15) demerits.

A W A R D

Claim sustained in accordance with the Findings.

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.