

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32408
Docket No. MW-32918
98-3-96-3-287**

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The five (5) day suspension assessed Bridge Tender J. F. Hooks for alleged negligence in the operation of the Mobile River Drawbridge on April 17, 1995 was without just and sufficient cause, based on an unproven charge and in violation of the Agreement [System File 4(26)(95)/12(95-0635) LNR].**
- (2) As a consequence of the aforesaid violation, Bridge Tender J. F. Hooks shall be '... repaid for the five (5) days suspension and have those days counted as days accumulated for the purpose of vacation, personal leave, etc. . Appeal is also made that the claimant's record be cleared of all charges and that he be paid for his time and expenses for attending the Carrier's hearing into these charges.'"**

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 employee 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 were given due notice of hearing thereon.

On April 17, 1995 Claimant was working as a Bridge Tender on the Mobile River Drawbridge. He was in the process of restoring the bridge to its closed position so the flow of rail traffic could resume, when at approximately 3:00 P.M. he received a call on the radio from another Boater to open the bridge. Although the bridge was two-thirds of the way closed, Claimant released the control levers to answer the radio. When Claimant returned to the control levers, the bridge was immobilized, and would not respond to the changing of the levers. Claimant contacted Bridge Supervisor R. F. Garrett and told him about the bridge jam and when it occurred.

Supervisor Garrett set out to inspect the jam, but before he arrived at the bridge, Claimant inspected underneath the bridge. After that inspection, Claimant returned and again tried the control levers at approximately 4:20 P.M. at which time the bridge closed and the delayed trains were moved.

Supervisor Garrett and Lead Carpenter P. M. Woods arrived shortly thereafter and, along with the Claimant, performed an inspection of the bridge apparatus. Three teeth on both the rack circle and pinion gears, located approximately 30 degrees out from the closed position, had fresh metal slivers on them which indicated a mismatching of the gears' teeth. Except for the metal slivers, the drawbridge mechanism appeared to be normal. All of the teeth were in regular condition with grease on the tips and there was no detection of lateral movement in the rack circle gear.

It was the opinion of Garrett and Woods that the mismatching of gears was caused by negligence in operation of the control levers, namely that the levers were switched from a closed position to an open position while the bridge was in motion and this caused the gears to mismatch. The sudden change in the position of the levers caused the pinion gear to run counterclockwise while the rack gear was moving in a clockwise direction. This action forced the pinion gear teeth to slip on top of the rack gear teeth and caused the mechanism to malfunction.

Claimant was notified by letter dated April 19, 1995 from Supervisors Garrett to attend a formal Investigation on April 27, 1995 to determine whether he had been

negligent in the operation of the drawbridge. The Investigation was postponed by mutual agreement until May 17, 1995 at which time it was held.

The Organization contends the Hearing was not conducted in a fair and impartial manner because Claimant had been prejudged. The Board finds otherwise. Claimant was given notice of the charges against him and proper notice of the Hearing. Claimant attended the Hearing and was represented by a representative of his choice.

The Board also determines that there is substantial circumstantial evidence establishing that Claimant was guilty as charged and the five day suspension was proper.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of January 1998.