

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33918  
Docket No. MW-34234  
00-3-97-3-793**

The Third Division consisted of the regular members and in addition Referee Sandra Gilbert Pike when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(  
(The Burlington Northern and Santa Fe Railway Company  
( (former Burlington Northern Railroad Company)

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The twenty-five (25) day suspension assessed Machine Operator T. P. Graham for his alleged failure to use lockout/tagout procedures while operating machine Number BNX0100276 which resulted in a personal injury on April 18, 1995 was without just and sufficient cause and excessive punishment (System File B-M-88-0/MWB 95-08-30AG BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Machine Operator T. P. Graham shall now have his record cleared of this incident and '\*\*\*Restoration of loss is to include, but not limited to, wages loss, overtime opportunities lost, promotional opportunity and all fringe benefits lost such as insurance, railroad retirement contributions, etc.”**

**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.

At approximately 10:30 A.M. on April 18, 1995, Claimant was operating Anchor Boxer BNX 0100276 when the safety lock for the workhead turned. Claimant did not follow proper lockout/tagout procedures before attempting to adjust the misaligned piece. The workhead unexpectedly completed the work cycle and pinched Claimant's finger. Claimant reported and was treated for his injury.

A three man inspection team investigated the accident and examined the machine used by the Claimant. The three man inspection team determined that the injury was caused by Claimant's failure to adhere to lockout/tagout procedures.

By letter dated April 19, 1995, Claimant was notified to "arrange to attend investigation . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failing to follow lockout/tagout procedures while operating machine Number BNX0100276 . . ." which resulted in a personal injury.

Following the Investigation which was held on April 28, 1995, a Notice of Discipline was issued on May 26, 1995, notifying the Claimant that he had been found guilty and assessed discipline of a 25-day suspension for violation of Rule 30.5.2 of the Burlington Northern Maintenance of Way Operating Rules.

The Organization appealed Claimant's suspension to the Carrier's highest designated officer, and the appeal was denied. The parties being unable to resolve the issue, this matter comes before the Board.

The Organization raised a procedural issue that the Claimant did not receive a proper copy of the transcript of the Investigation in this case.

The Board has reviewed the procedural claim raised by the Organization and we find it to be without merit.

With respect to the substantive issue, the Organization contends that Claimant did not deliberately violate the Safety Rule because Claimant was not aware of the proper procedure, Carrier had not properly trained Claimant, and the machine was mechanically faulty.

The Board reviewed the record and the testimony in this case. Claimant admitted that he had not complied with the Safety Rule.

**“Q. Mr. Graham, did you comply with this rule?**

**A. I thought I was, yes. But according to your rules, no.”**

**Carrier's Safety Rules expressly prohibit an employee from working on machines without first properly locking out the machine. We do not find the Organization's contention that Claimant did not know the proper lockout procedure due to Carrier's failure to properly train Claimant persuasive. Evidence indicates that training was provided. Nor do we find persuasive the argument that the accident was due to a mechanically faulty machine. While evidence was introduced that the machine had recently been repaired for mechanical problems, evidence also indicated that mechanics found no mechanical problems when the machine was inspected after the injury. Evidence clearly indicated that the injury would not have occurred had the proper lockout/tagout procedure been followed.**

**The Board finds that the record shows substantial probative evidence in support of the Carrier's determination that the Claimant violated Rule 30.5.2. The discipline of 25 days was not excessive.**

**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 24th day of January, 2000.**