

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22564  
Docket Number MW-22377

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Chesapeake and Ohio Railway Company  
(Southern Region)

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

(1) The disqualification of L. G. Ward as an Equipment Operator was without just and sufficient cause and was capriciously imposed (System File C(So)-D-344/MG-1709).

(2) Claimant L. G. Ward's seniority as a machine operator shall be restored unimpaired and he shall be paid for all time lost from September 24, 1976 up to the date he is restored at the machine operator's rate."

OPINION OF BOARD: On September 24, 1976, claimant was employed as a machine operator. In that capacity, he was assigned to move a Tie Shearer machine over the main track as the lead machine in a convoy of machines being moved between Woody Station and Meadow Bridge on Carrier's Sewell Valley sub-division of the Hinton Division. During this main track movement, claimant lost control of his machine after which it ran unattended for approximately five (5) miles where it collided with a multiple tamper machine operating in the vicinity of Claypool, West Virginia, injuring the two (2) employees who were working with the tamper and destroying both pieces of equipment.

Claimant was subsequently required to attend a hearing on October 7, 1976 in connection with this incident, after which he was disciplined by being disqualified as an equipment operator.

The testimony in the hearing record, including claimant's own testimony, clearly establishes that, by his actions and/or lack of action, he was primarily responsible for the machine "run-away" and resultant collision.

In addition, we have given serious consideration to our function as an appellate tribunal in situations of this kind. And, based upon the total fact situation which exists in this case, including

the fact that there is no evidence in the record of any prior derelictions of duty attributable to claimant, we do not feel that total and permanent disqualification as equipment operator is warranted.

Therefore, while we are denying the claim as presented in this case, we nonetheless rule that claimant should be afforded the opportunity to make application for equipment operator positions in the future, subject, of course, to his ability to qualify on the particular piece of equipment, and thereby reestablish equipment operator standing.

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 Employees involved in this dispute are respectively Carrier and Employees 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 disposed of as per Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1979.

