

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26364
Docket Number MW-26966

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Houston Belt & Terminal Railway Company

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

(1) The dismissal of Machine Operator K. D. Lavergne for alleged responsibility in connection with the derailment of Machine No. 156 and damage to Hughes Tools Building on or about January 9, 1985, resulting in a personal injury to Mr. G. V. Puga, was unreasonable and unwarranted.

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was in charge of Machine No. 156, a Tie Crane, on January 9, 1985, when it derailed and damaged a Hughes Tool Building.

From an Investigation conducted on January 24, 1985, it appeared that Machine Number 156 was the last of a group of machines moving from the main track to a stub track. At least three eye witnesses testified Claimant was operating the machine too fast for conditions. One of the witnesses was riding the machine with Claimant and told Claimant to "take it easy." That witness, fearing collision, finally jumped from the machine and injured himself. Thereafter the machine derailed and the crane boom struck the Hughes Building. Several witnesses testified the tracks were slippery due to wet grass. Claimant denies fault and contends the brakes failed and that he derailed because he hit something on the rail, not because of speed. Two witnesses had checked the brakes at the scene on the day of the accident and a Machinist checked them the next day. All agreed the brakes were operative.

Claimant attributed the testimony of witnesses to the fact that "that gang around me . . . everybody is trying to cut each other throats."

Claimant, who had been employed since 1978, had been discharged on September 27, 1984, and returned on a twelve month probationary basis on September 28, 1984.

On February 6, 1985, Claimant was notified of his dismissal, effective immediately. Throughout handling of the Claim on the property Carrier had maintained:

"The charges were clearly supported . . . and the assessment of dismissal was not excessive . . . for the nature of the violation and in consideration of his previous work record."

This Board agrees.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 25th day of June 1987.