

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company (Eastern 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 employe or employes involved in this dispute are respectively carrier and employes 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 maneuvering (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 known 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.