

The Third Division consisted of the regular members and in addition Referee Stanley E. Kravit when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Missouri-Kansas-Texas Railroad Company

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

(1) The discipline imposed upon Section Foreman R. D. Cheak for alleged violation of Rules 304, 313, 367 and 607(2) was harsh, unjust and unreasonable (System File 300-63/2579).

(2) The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all 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 December 3, 1986, because of a shortage of personnel, Claimant, a Foreman, was instructed to operate a tamper as well as direct the work of his crew. A mechanical failure resulted in the tamper being parked temporarily ahead of a ballast plow, which was four or five rails behind. Claimant was receiving repeated inquiries as to when the track would be cleared.

Claimant ordered the ballast plow operator to back the plow out of the way so that he could back the tamper up also. The design of the tamper blocks the operator's view and there was no other employee utilized to direct its movement. Although Claimant waited a few moments, the plow operator did not carry out his instructions. Therefore, when the Claimant, admittedly without checking first, backed the tamper he hit the plow causing severe damage to it. At the investigation Claimant admitted that he should have checked before moving the tamper. For his alleged negligence he was given 30 days actual suspension and 30 days deferred.

Given the testimony on the record and the manner in which the accident occurred, the Board finds that there was reasonable cause for disciplinary action. However, Claimant was an employee of 27 years experience with an excellent record. The Organization contends that the discipline was excessive given his record and the circumstances. It has been stated many times that the Board should not disturb the judgement of the Carrier unless it has grounds to conclude that the degree of discipline was excessive.' Given the contributing negligence of a crew member and taking into account the superior record of the Claimant, the penalty is too severe. We will award that Claimant's suspension be reduced to the 30 days served.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.