

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28146
Docket No. MW-27845
89-3-87-3-368

The Third Division consisted of the regular members and in addition Referee W. F. Euker when award was rendered.

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

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

(1) The discipline (ten working days of actual suspension and the ten working days of deferred suspension) imposed upon Track Laborer G. S. Hartford for alleged violation of General Rules I, 313, 367, 607, 621 and 4001 on April 7, 1986 was unjust, arbitrary and on the basis of unproven charges (System File 300-131).

(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 employees involved in this dispute are respectively carrier and employees 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 April 7, 1986, Claimant was assigned to Track Gang 600, located in the vicinity of Granger, Texas. He was instructed by his Foreman to operate Tamper RM908 and sometime after taking control collided with Tamper RM1070, causing damage to his own vehicle. Claimant was duly notified to attend a formal investigation and was charged with responsibility for the accident as well as submitting false information concerning the accident, in violation of certain specified Carrier Rules. The Claimant was found guilty as charged and assessed 10 days actual and 10 days deferred discipline, both of which are the subject of this appeal.

The record before the Board contains clear and convincing evidence in support of the conclusion that Claimant was either extremely negligent in the operation of the Tamper on the date in question, or failed to exercise the vigilance required to avoid the accident. Visibility was asserted to be 1 to 2 miles to the point of impact, and Claimant's speed, by his own calculation, was "not to fast." The charge of falsification arose out of the interrogation that took place shortly after the accident, when Claimant said the Tamper would not stop because they had blown a hydraulic hose and oil had saturated the wheels, causing them to skid. Later evidence submitted at the investigation indicated the hydraulic hose was punctured as a result of the accident, as the only oil found on the rail was at the point of impact.

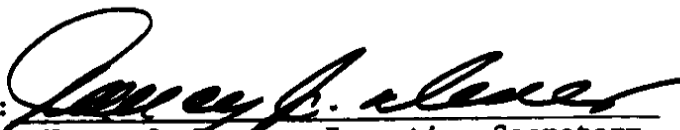
In our opinion, there was sufficient substantial evidence presented to warrant the assessment of the penalty levied in this case and the Board finds no reason to disturb the discipline.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.