

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30016
Docket No. MW-30107
94-3-91-3-532

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former A&WP-WofA-
(AJT-Georgia Railroads)

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

- (1) The dismissal of Machine Operator F. E. Scott for alleged violation of Safety Rules 181, 182, 224 and 227 on October 29, 1990 was unwarranted, excessive and in violation of the Agreement [System File 91-16(AWP)/12(91-48) AWP].
- (2) The Claimant shall be reinstated with all seniority and other rights unimpaired, he shall have his record cleared of the charges leveled against him and he shall be made whole for all loss of wages and fringe benefits 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant was employed as a Machine Operator and was working as such in the vicinity of Augusta, Georgia, on October 29, 1990. On that date, Claimant was assigned to operate a Tamper machine. During his tour of duty, he was involved in a collision between his Tamper machine and a Ballast Regulator machine. As a result of the collision, Claimant was notified by letter dated October 31, 1990, to appear for an Investigation on November 7, 1990, on a charge of

possible violation of Safety Rules #181, #182, #224 and #227. On the Investigation notice, Claimant was informed that his "Personal record will be subject to review at the hearing." The Investigatory hearing was held as scheduled at which time Claimant was present, represented and testified on his own behalf. At the hearing, after consultation between the hearing officer, the employee representative and the Claimant, the parties agreed that rather than read Claimant's personal and discipline record into the hearing transcript, a copy of the record would be appended to the transcript. Following completion of the Investigation, Claimant was informed by letter dated November 14, 1990, that he had been found at fault in connection with the collision and he was dismissed from Carrier's service.

It is the position of the Organization that Carrier prejudged Claimant's guilt; that Carrier did not prove the charges as made; that the fact that there was a collision does not, per se, prove negligence on Claimant's part; that Carrier failed to apply the principle of progressive discipline and that dismissal was not warranted by the facts of this case.

For its part, Carrier asserts that Claimant was afforded a fair and impartial hearing; that the burden of proof had been met by substantial evidence and that the discipline by dismissal as assessed, when considered in light of this proven offense plus the "deplorable" prior record of the Claimant, was fully justified.

The Safety Rules here at issue read as follows:

- "181. Mechanized equipment must be operated at a safe and reasonable speed to allow for stopping short of an obstruction or person. Equipment must be separated sufficiently to avoid collision, and care must be exercised in passing.
- 182. Mechanized equipment operators must keep a constant lookout in the direction being traveled. They must look to the rear before engaging machine in reverse, making certain there is no obstruction or person in the path to be traveled. In shop and stores areas, full loads have the right of way (sic) over empties.
- 224. On-track equipment must move prepared to stop within one-half range of vision. Such equipment must neither

exceed speeds specified for on-track equipment on the Operating Rules nor speeds authorized for trains on the same track.

227. On-track equipment must be stopped when the operator is writing, or at any other time that the operator's attention cannot be directed exclusively to controlling the movement."

From our review of the hearing transcript, it is abundantly clear that Claimant was less than attentive to his duties during the movement of the Tamper machine at the time of the collision. The testimony of the Machine Operator who was operating the Ballast Regulator is clear, consistent and convincing. For whatever reason, Claimant was not looking in the direction in which he was moving. He was not prepared to stop his machine short of the obstruction which was the Ballast Regulator. Much ado is made by the Organization relative to the location of the Foremen and other Supervisors. However, such an argument is not convincing and does not relieve the Machine Operator of his primary responsibility to operate his machine at a safe speed and to stop short of any obstruction or person. He must be held accountable for his own actions.

As to the contention that Carrier did not apply the principle of progressive discipline and that the incident here involved did not warrant discipline by dismissal, this Board is convinced, on the basis of the record in this case, that not only did Carrier repeatedly attempt to correct Claimant's wayward work habits by progressive discipline but also properly considered the terrible work and discipline record of the Claimant when determining the degree of discipline to assess for the instant proven dereliction. Claimant had been warned. He had been cautioned. He had been assessed disciplinary suspensions. He had been disqualified from operating certain types of machines. He had been accorded more than his share of chances to set himself straight and apparently chose not to do so. Dismissal from service on the basis of the record in this case is not excessive, arbitrary or capricious. This Board has no basis on which to make any change in the discipline as assessed.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.