

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31050
Docket No. MW-31680
95-3-93-3-705

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Texas Mexican Railway Company

STATEMENT OF CLAIM:

- "(1) The twenty-one (21) calendar day dismissal imposed upon Machine Operator D. Holguin, Jr. as a result of a collision involving two (2) track machines on December 4, 1992, was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File MW-93-4-TM).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to his former position with all seniority, vacation rights and any other rights accruing to him unimpaired, his record shall be cleared of the charge 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 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.

A crane and a tie-inserter were being moved from a siding to where needed. The crane was in the lead, the tie-inserter followed. The crane stopped with the intent to perform some work. The tie-inserter did not. It rammed the crane causing extensive damage to both machines. The accident occurred on a straight stretch of track with an unobstructed view on a clear day. Fortunately for all concerned, no one suffered an injury.

This case involves the operator of the lead crane. Before leaving the siding, the Foreman instructed Claimant that the crane was to be the trailing unit, the tie-inserter was to be the lead. These instructions were not followed. Claimant stated he simply did not hear the instructions. This, of and by itself, was not the cause for the accident. Claimant failed to abide by that part of Rule TM-28 which provides:

"*** When running, the distance between individual track cars or other on-track equipment, must not be less than 500 feet. When stopping, equipment ahead must give signal to the following equipment."

Claimant readily admitted the last time he checked the following machine, it was about one mile prior to the point he did stop. Furthermore, he did nothing to signal the following machine that he intended to stop, that he was in the process of stopping, that he had stopped nor did he observe the trailing unit to determine if he was also stopping.

Granted, the trailing unit operator would have a greater responsibility to maintain the 500 foot distance than the lead unit, but had just one operator been alert and abiding by Rule TM-28, the chances of the accident occurring would have been greatly reduced, if not avoided entirely.

Some argument was advanced by the Organization concerning the interview of Claimants, immediately following the accident, as though said interview somehow was prejudicial; but Carrier's explanation was sufficient. The Carrier merely wanted to establish what happened. It was investigating the accident, not the Claimants. It is the prerogative of the Carrier to establish the basics of the accident. It must know what needs correcting before it can commence the corrective process.

Twenty-one days out of service is relatively light for the damages incurred. Perhaps such discipline will impress upon Claimant that he must be and remain constantly on the alert at all times.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.