

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31051
Docket No. MW-31681
95-3-93-3-709

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 Employees
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(Texas Mexican Railway Company

STATEMENT OF CLAIM:

- "(1) The sixty (60) days of dismissal from the Carrier's service imposed upon Machine Operator L. Adams for alleged violation of Carrier's General Notice, General Rule H, Rules TM 28, TM 32, TM 801, TM 964, Safety Rule 27 and Rule 3 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-93-5-TM).
- (2) The Claimant shall have his personnel record cleared of all mention of the discipline and charges leveled against him, he shall have all seniority, vacation rights and all other rights and benefits accruing to him unimpaired 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.

This is a companion case to Third Division Award 31050.

Claimant was operating the tie-inserter machine and was following the crane. The crane stopped, the tie-inserter did not. The damage was extensive; fortunately, no one suffered any injuries. Claimant in this case was charged with violation of eight Carrier Operating and/or Safety Rules i.e., failing to maintain a 500 foot interval, speeding, failure to operate a track machine in a safe manner, and failure to stop short of persons or objects.

There can be no doubt as to Claimant operating the unit at excessive speed. He stated he noticed the lead crane as having stopped when he was approximately 390 feet back, yet the tie-inserter rammed the crane with sufficient force to move it a distance of 44 feet from point of impact.

To reiterate, the accident occurred on a straight stretch of track on a clear day with nothing to obstruct Claimant's view.

All the arguments raised by the Organization to overturn and/or mitigate the discipline has been adequately addressed by the Carrier in the on-property handling of this dispute. This includes the alleged prejudicial immediate interview of Claimant on the day the accident occurred. As stated in Third Division Award 31050 it is Carrier's prerogative to investigate accidents promptly, to find cause, if any, and take whatever corrective action deemed necessary.

This Board will not interfere with the discipline assessed. Claimant's culpability was clearly established. The damage was extensive.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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