

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32759  
Docket No. MW-33846  
98-3-97-3-341**

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

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company (Southern Pacific Lines)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The thirty (30) day suspension assessed Boom Truck Driver R. E. Crossley for his alleged responsibility in connection with the operation of an end loader that collided with a hi-rail pickup truck on March 14, 1996 at Plano, Texas was without just and sufficient cause, based on unproved charges and in violation of the Agreement (System File MW-96-67/MWD 96-24 SPE).**
- (2) Boom Truck Driver R. E. Crossley shall now be compensated for all wage loss suffered, his record shall be cleared of the incident and he shall be afforded all benefits due him absent the discipline.”**

**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 were given due notice of hearing thereon.

While operating a front end loader on March 14, 1996 as stand-in for the regular Operator, Claimant collided with a parked pick-up truck, causing it substantial damage. There were no witnesses to the incident. Following Investigation and Hearing, he was suspended for 30 days for violation of Carrier's Safety Rules in failing to operate his machine in an alert and attentive manner.

The Carrier asserts that had Claimant not operated the front end loader with its bucket raised so as to obscure his vision, the accident could have been avoided. The Organization asserts, among other defenses, that Carrier violated the Agreement in (1) failing to hold the Investigation on the seniority district where the alleged violation occurred and (2) not rendering a timely decision thereafter.

The provisions of the Agreement upon which the Organization relies read in part as follows:

#### **"ARTICLE 14**

#### **DISCIPLINE AND INVESTIGATION**

**SECTION 3 - The investigation will be held on the seniority district where the alleged violation occurred. . . .**

**SECTION 4 - . . . Decision will be rendered within fifteen (15) calendar days after completion of the investigation."**

In this case, it is undisputed that: Claimant's request for an Investigation into the suspension assessed was mailed March 25, 1996; Carrier's notice of formal Investigation was sent by certified mail on March 27, 1996; it was received by the Organization on March 29, 1996; Investigation was held at Dallas, Texas on April 9, 1996; Carrier's decision upholding the 30 day suspension was dated April 17, 1996; it was mailed by Carrier to Claimant by way of Certified Mail-Return Receipt Requested on April 30, 1996; it was faxed to and received by the Organization on April 30, 1996.

While the Board recognizes that harsh or unfair results can be produced by application of contractual time limits, the Carrier's obligation to render a prompt

decision was agreed upon by the parties to insure timely and efficient claims handling, as were those deadlines imposed on the Claimant and the Organization. As has been stated repeatedly in the Awards of this Division, those Rules are absolute, and the Board has no authority to extend them, disregard them, or reach the merits of claims which are out of compliance with them.

The Board finds that because Carrier failed to mail its decision of the Investigation within the time frame set by the Rule, the claim must be sustained.

**AWARD**

**Claim sustained.**

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 23rd day of September 1998.**