

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33629
Docket No. MW-33992
99-3-97-3-512**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(The Kansas City Southern Railway Company (former
(SouthRail Corporation)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) day suspension] imposed upon Heavy Equipment Operator E. Brooks, Jr. for alleged ‘. . . violation of Rules quoted in this investigation’, in connection with an impact collision that occurred on May 23, 1996, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [Carrier's File 013.31-530(1) SRL].**
- (2) The discipline [sixty (60) day suspension] imposed upon Track Foreman J. L. Wells for alleged ‘. . . violation of Rules quoted in this investigation’, in connection with an impact collision that occurred on May 23, 1996, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [Carrier's File 013.31-530(2)].**
- (3) The discipline [thirty (30) day suspension] imposed upon Trackman A. Sims, Jr. for alleged ‘. . . violation of Rules quoted in this investigation’, in connection with an impact collision that occurred on May 23, 1996, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [Carrier's File 013.31-530(3)].**

- (4) As a consequence of the violations referred to in Parts (1), (2), and (3), the Claimants shall each receive the remedy prescribed by the parties in Rule 33(g)."

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.

On May 23, 1996, Claimant Wells was operating a Hirail Truck in which Claimants Brooks and Sims were passengers. They were proceeding on the rail toward Milepost 62.7 to repair a strip joint when they struck a Welding Truck that was stationary on the track. On May 29, 1996, the Claimants were notified to report for an Investigation on June 6, 1996, "to ascertain the facts and determine your responsibility, if any, in connection with an impact that occurred on May 23, 1996, at approximately 1310 hours, At Mile Post MR 57.29, Elrod, Alabama, in which the MW 3086, operated by Mr. J. Wells, struck the MW 2538 . . ."

The Hearing was held as scheduled. On June 13, 1996, Claimants Brooks and Sims were advised that they had been suspended for 30 days and Claimant Wells was notified that he had been suspended for 60 days.

The Organization contends that the Carrier failed to give the Claimants proper notice of the charges and that the Carrier failed to prove the Claimants' responsibility for the accident. The Carrier maintains that it provided proper notice and proved the Claimants' responsibility for the accident.

The Board has reviewed the record carefully. The notice clearly appraised the Claimants of the subject of the Hearing and enabled them to prepare their defense. There is no requirement contained in the Agreement that the Notice of Investigation list specific Rules that are alleged to have been violated.

We also find that the Carrier proved the violations that formed the basis for the discipline by substantial evidence. Claimant Wells was driving the hirail vehicle at the time of the impact. He admitted that just prior to the impact he was watching a turkey flying overhead and did not see the Welding Truck stopped ahead of him. Clearly, he failed to maintain a proper lookout. Furthermore, Claimant Wells admitted that he knew the Welders were in the area, he had tried to radio them without success and therefore did not know where they were, and that he was driving at a speed between 25 and 30 miles per hour. However, under such circumstances, the Rules required that he operate at a speed that would permit stopping within one-half the range of vision short of obstructions, not to exceed 20 miles per hour.

Although Claimants Sims and Brooks were not operating the vehicle, as passengers they too had a duty to maintain a clear lookout. Each admitted that he failed to do so. Claimant Sims admitted that he also was watching the turkey. Claimant Brooks admitted that he was not paying attention. The admissions of each Claimant established their responsibility for the accident. The claims must be denied.

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 16th day of November 1999.