

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35728
Docket No. MW-35043
01-3-98-3-734**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Grand Trunk Western Railroad, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [suspension from holding a foreman’s position for a period of one (1) year] imposed upon Foreman J. Rodriguez for alleged violation of Rule #3003 in connection with damage to Truck 6022 YB while supervising the operation of and riding in said truck on September 10, 1997, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (Carrier’s File 8365-1-617).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to the foreman position with seniority and all other rights unimpaired, his record cleared of the charges 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 were given due notice of hearing thereon.

Rule 3003 provides:

“Foreman or other person in charge of work shall be responsible for safety instruction, including reading of the Safety Rule of the Day, and safe performance of all of the men under him.”

A careful review of the record indicates that the Claimant was riding as a passenger in a truck that had a hydraulic crane attachment that workers used to handle rail and other track material. While traveling in the vehicle, the boom hit an overhead bridge. The collision damaged the boom and the truck.

The record confirms that the Claimant should have known that the driver of the truck had failed to position the boom in a proper manner. In this regard the position of the Claimant as a passenger meant that the improper position of the boom was visible to the Claimant. As a Foreman, the Claimant therefore had an affirmative obligation to be aware of the safety implications that existed in the context of traveling in the vehicle and should have checked to make sure that the boom was in the proper position. The fact that a collision occurred certainly confirms that the Claimant failed to take such a reasonable precaution. The Carrier has a legitimate right to expect that a Foreman, such as the Claimant, would have taken such minimal action to protect the safety of the Carrier's employees and the public and to safeguard the property of the Carrier and third parties.

Under these circumstances the Carrier did not act in an arbitrary or capricious manner by disciplining the Claimant. The Carrier therefore sustained its burden to prove that a violation of Rule 3003 had occurred. Any other arguments raised by the parties are not material to a resolution of this dispute.

AWARD

Claim denied.

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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 24th day of October, 2001.