

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35731
Docket No. MW-35102
01-3-98-3-836**

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 Employees
(Union Pacific Railroad Company (former Southern
(Pacific Transportation (Eastern Lines))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (letter of reprimand) imposed upon Machine Operator V. R. Chapman for alleged violation of Union Pacific Rules 42.2.2, 42.8, 42.9 and 1.1.2 on June 19, 1997 was unwarranted and on the basis of unproven charges (System File MW-98-13/1102062D SPE).
- (2) As a consequence of the violation referred to in Part (1) above, the letter of reprimand and all reference to it shall be removed from the Claimant's record.”

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.

A careful review of the record indicates that a co-worker used his machine to tow the Claimant's machine, which had a mechanical problem. During the process of pushing the Claimant's machine from the work site to a side track, the Claimant's machine came into contact with a third machine. Although the co-worker took responsibility for the error and received discipline from the Carrier, the Carrier decided to issue the disputed letter of reprimand to the Claimant.

The Carrier has the burden of proof to impose discipline. In the present case, the record indicates that the Claimant had an affirmative obligation to warn the co-worker of the approaching danger in a timely manner and to apply the brakes in a way that avoided contact with the third machine under these precise circumstances. For whatever reason, the Claimant failed to do so. By issuing a letter of reprimand, the Carrier acted to underscore to the Claimant the importance of remaining vigilant and of anticipating potential hazards in the workplace. The Carrier had a right to expect that the Claimant would not merely rely on his co-workers to insure a safe work environment. The Carrier had a right to require the Claimant to assume such responsibility as well. The issuance of such minor discipline in the form of a letter of reprimand in conjunction with the Rule violations involved in the present case therefore did not constitute an arbitrary or capricious action by the Carrier and did not constitute an abuse of discretion by the Carrier.

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 24th day of October, 2001.