

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36324
Docket No. MW-33229
02-3-96-3-696**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The fifteen (15) day suspension assessed Track Repairman L. R. Timbs, Jr., for his alleged responsibility for a collision between a ballast regulator and tamper on August 26, 1995 was without just and sufficient cause, in violation of the Agreement and based on an unproven charge [System File 15(17)(95)/12(95-1069) LNR].**
- 2. As a consequence of the violation referred to in Part (1) above, Track Repairman L. R. Timbs, Jr. shall now be compensated for all wage loss suffered, including overtime, and shall have his record cleared of the charges.”**

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 August 25, 1995, a ballast regulator operated by the Claimant ran into a tamper causing approximately \$8,000.00 in damage.

According to the Claimant, he was operating between 10 and 15 mph and:

[A] ... I throttled up after I got through the crossings and it looked like he was 4 or 500 foot in front of me and I kept on watching the temperature gauge and then when I looked back down I was, you know, too close to him to stop. I kept my eye on the temperature gauge because it pegged out so quick back at Murfeesboro, next it happened at Fosterville.

[Q] Mr. Timbs when you looked away at the temperature gauge of the machine, and when you looked up you couldn't stop in the clear distance ahead?

[A] That's right."

Operating Rule 720 requires that "[o]n-track equipment must move prepared to stop within one-half the range of vision." Operating Rule 727 requires that "[t]he space between on-track equipment, when running, must be sufficient to avoid an accident." Substantial evidence shows that the Claimant violated those Rules. The Claimant was not keeping a watchful eye on the track ahead of him. He allowed his attention to be distracted when he focused on the temperature gauge rather than on the equipment in front of him.

Under the circumstances, we cannot find that a 15-day suspension was arbitrary.

AWARD

Claim denied.

Form 1
Page 3

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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 26th day of December 2002.