

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42578  
Docket No. MW-42335  
17-3-NRAB-00003-130360**

**The Third Division consisted of the regular members and in addition Referee Robert A. Grey when award was rendered.**

**(Brotherhood of Maintenance of Way Employes Division -  
( IBT Rail Conference**

**PARTIES TO DISPUTE:** (

**(Springfield Terminal Railway Company**

**STATEMENT OF CLAIM:**

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

- (1) The discipline [suspension from service without pay for twenty (20) calendar days] imposed upon Mr. W. Perro by letter dated November 28, 2012 for alleged violation of Safety Rule(s) PGR-J, P-83 & Negligence in the performance of duties on September 24, 2012 while running Production Tamper 10606 near Gloucester was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (Carrier’s File MW-12-16).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now remove all references to the aforesaid discipline from Claimant W. Perro’s record and compensate him for all lost wages.”**

**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.**

The Claimant received the above-stated discipline after an investigation “to develop the facts and place your responsibility, if any, in connection with the incident(s) outlined below: Violation of Safety Rule(s) PGR-J, P83 and Negligence in the performance of duties. PGR-J reads as follows ‘Employees must be observant and use common sense at all times.’ P83 reads as follows ‘Employees must be aware of the location of structures or obstructions where clearances are close.’ Specifically, on September 24, 2012 while running the production tamper 10606 near New Gloucester, the work head on the tamper dropped resulting in damage to the equipment.”

The Board finds the Organization’s procedural objections unpersuasive. The Board finds substantial evidence in the record to sustain the Carrier’s determination.

The Board notes that the Claimant was relatively new to this particular model of tamper machine, and that it operated somewhat differently than tamper machine models the Claimant was more familiar with. However, the Claimant received direct instruction, less than two weeks before this incident, on the necessity, importance and how-to regarding locking the work heads in the up position before moving the machine when not tamping. The Board notes that damage to the work heads from this incident, without any damage to the locking mechanisms, is significant among the substantial evidence of the Claimant’s culpability. The work heads would not have drifted down, and the Claimant would not have needed to take immediate action to raise them, if they had been locked in the up position in the first place. There is no substantial evidence that the locking mechanisms failed or were not in proper working order.

Under the facts and circumstances of this record, the Board finds that the discipline assessed by the Carrier was neither arbitrary, capricious, unproven nor in violation of the Agreement. Therefore, said discipline will not be disturbed by the Board.

**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 19th day of April 2017.**