

PUBLIC LAW BOARD NO. 2960

AWARD NO. 49

CASE NO. 39

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) the Twenty (20) day suspension assessed Machine Operator G. A. Simsik for alleged responsibility in the collision between a tamper and tie inserter was without just and sufficient cause, unwarranted and on the basis of unproven charges. (Organization File 7A-1847; Carrier's File D-11-8-565.)

(2) Machine Operator G. A. Simsik shall be allowed the remedy prescribed in Rule 19(d) of the effective Agreement.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

On April 23, 1981, the Claimant and two other employees, Mr. R. S. Crenshaw and Mr. C. Foster, received a letter directing them to attend an investigation. The letter read in pertinent part as follows:

You are directed to report for formal hearing as scheduled below:

Place: Roadmaster's office, Crystal Lake, Ill
Date: Monday, April 27, 1981
Time: 9:00 a.m.

Charge: To determine the facts, and your responsibility, in connection with the collision of system machine #17-2257, Jr. Tamper and system machine #17-1737, W-90 Tie Inserter on Tuesday, April 21, 1981, at approximately MP 74 on the Madison Subdivision, Wisconsin division at approximately 11:55 a.m.

Subsequent to the investigation, the Claimant was assessed the 20-day suspension which is now before the Board on appeal.

On the day in question, the Claimant was operating the Jr. Tamper which occupied the same track as the Tie Inserter operated by Mr. Crenshaw. Crenshaw was directed to move his machine into the clear by the Supervisor because a train was waiting to pass. To do this, he had to move in the direction of the Tamper. In the process of the move, the machines collided.

The Organization argues the Claimant cannot be found guilty because (1) reverse movement of the Tie Inserter was unknown to the Claimant, (2) his attention was focused on his duties and (3) the extra oily condition of the track prevented him from stopping in time.

Contrary to the Organization, a careful review of the record reveals a substantial basis in the evidence for the Carrier's finding that Mr. Simsik had some responsibility in the accident. The Claimant admitted being about four pole lengths away from the Inserter when he first saw it. A pole length is approximately 100-125 feet. However, he clearly testified he did not take any measures to stop the Tamper until he was two pole lengths away. This hesitation in stopping was inappropriate under the circumstances and contributed to the accident. Had he been more alert and braked earlier, the accident could have been prevented or the impact at least significantly lessened. Witnesses estimated the speed of the Tamper impacted at approximately 1 mph. An

earlier braking would have slowed the machine even more. While the oil on the track made it harder to stop the machine, the Claimant fully admitted he was aware of the oily condition. This is all the more reason the Claimant should have been aware and on alert for conditions which necessitate a stop. In this regard, the Claimant virtually admitted violating Rule 1029 which states:

When rails are slippery due to wet weather, frost or any similar condition, a greater distance is required to stop work equipment and employee operating the equipment must take this into consideration.

The Claimant's testimony, in regard to Rule 1029, was as follows:

"Q: Mr. Simsik, do you feel you complied with this rule?

A: No, I don't think I had enough distance to come to a stop."


In view of the foregoing, the Claim must be denied.

AWARD

Claim denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. B. Crawford, Carrier Member

Date: 2/14/84