

PUBLIC LAW BOARD NO. 6301

**AWARD NO. 21
CASE NO. 21**

**PARTIES TO
THE DISPUTE:**

**Brotherhood of Maintenance of Way Employees
and
Kansas City Southern Railway Company**

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The five (5) day suspension assessed Machine Operator J. D. Luckett for the injury he sustained on August 21, 2001, was without just and sufficient cause and based on an unproven charge (System File A101701/M04015537 SRL).
2. Machine Operator J. D. Luckett shall be allowed the remedy prescribed in Rule 33."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant sustained an injury to two of the fingers on his right hand. One finger was merely bruised while the index finger required five sutures to close a cut. The injury occurred during the renewal of a road crossing. The gang was placing a guard rail next to the main line running rail at the time of the injury. A Trackhoe machine was being used to snug the guard rail up against the running rail before it was spiked in place. The gap between the two rails was approximately three inches. Claimant was in the act of setting a spike between the two rails when the Trackhoe inadvertently caused the guard rail to tip into the running rail and pinch Claimant's hand.

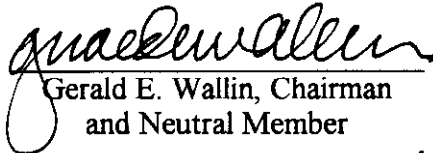
Our review of the record reveals no procedural shortcomings of significance. The Carrier raised the same procedural objection in this case as we addressed in Award No. 20. As explained in that award, we find the Carrier waived the objection on the property.

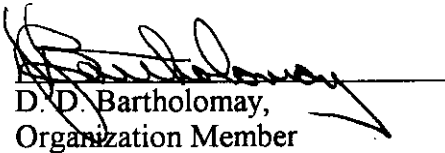
On the merits, we find the record to contain substantial evidence of Claimant's culpability for

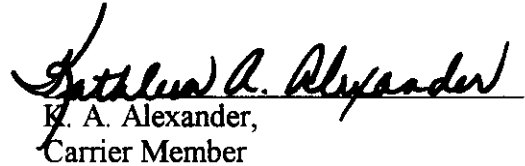
his injury. He admits he knew the Trackhoe was being used to pull the loose guard rail closer to the running rail. He also admits he facing away from the Trackhoe. According to the gang foreman, the job briefing that morning cautioned employees to stay away from the rail until the machine stopped. While not specifically recalling this part of the briefing, Claimant concedes it may have been said. Had Claimant watched the Trackhoe and waited until it stopped its movement, his injury would likely not have happened. He thus bears some culpability for the injury.

Under the circumstances, we do not find any proper basis for disturbing the Carrier's action.

AWARD: The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


D. D. Bartholomay,
Organization Member


K. A. Alexander,
Carrier Member

DATE: 11-5-02