

**PUBLIC LAW BOARD NO. 6461**

**Case No. 6**

**Award No. 6**

**PARTIES**

**To**  
**DISPUTE:**

Brotherhood of Maintenance of Way Employees  
- and -  
Grand Trunk Western Railway

**STATEMENT OF CLAIM:**

Appeal of the discipline of dismissal imposed  
on Gregory Reid, effective November 16, 2001.

**FINDINGS:** On October 20, 2001, claimant was given a notice charging him with the following offense:

"Alleged violation of Rule 1004 of the CN On-Track Safety Rules, and Rules 3240, 3242 and 3243 of the GT Safety Rules Maintenance of Way and Structures, Communications and Signal Employees.

The above charges are in connection with a collision between the Adzer Kribber Unit (KAK 9400) which you were operating and Speed Swing #434-48 at mileage 23.73 at approximately 1430 hours on October 17, 2001 while you were employed as a 2<sup>nd</sup> Class Machine Operator. The collision resulted in personal injuries to 3<sup>rd</sup> Class Machine Operator, Ronald Duncan and Trackman, G. Colson and caused approximately \$5,000.00 damage to Speed Swing #434-48 and a pre-gauger unit.

You are also charged with alleged insubordination and failure to comply with instructions in that you allegedly refused to comply with the direct order that you must submit to drug and alcohol testing. This order was issued to you by Assistant Superintendent Engineering, R. O. Papa, at approximately 1700 hours on October 17, 2001 at Mt. Clemens, Michigan."

At the outset, the Organization has advanced several contentions; namely, that the hearing was held over their protests in absentia and, it was not fair and impartial.

A review of the record shows that after several postponements, the hearing was held in absentia on November 5, 2001. While the Board prefers to review hearings which include the

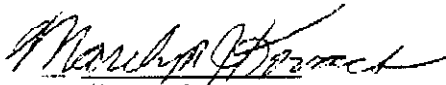
claimant's testimony, given the efforts made by the Carrier, we find no basis to set this claim aside because of his absence and conclude that he was given a fair and impartial hearing.

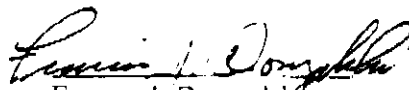
The transcript of the hearing reveals that the operator of the Speed Swing Machine, which was struck by the claimant, followed proper warning procedures prior to stopping his machine. The claimant on the other hand, did not follow proper safety measures prior to him operating the self-propelled machine nor did he exercise good judgment in the operation of said machine. Clearly, had he been more vigilant and safety conscious, the accident could have been prevented.

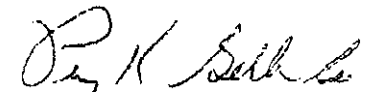
With regard to the charge of insubordination, the record is abundantly clear that claimant steadfastly refused to follow a direct order to take the required drug and alcohol test. The foregoing is supported by the testimony of Mr. Papa, and confirmed by Mr. Siebert who witnessed Mr. Papa giving the order to the claimant.

Based on the hearing transcript, we find the weight of evidence conclusively shows the claimant is guilty of the offense for which he was charged. Therefore, in consideration of the seriousness of the proven offense, we will not disturb the Carrier's disposition in this case.

**AWARD:** The claim is denied.

  
Marilyn J. Kovacs  
Carrier Member

  
Francis J. Domzalski  
Neutral Member

  
Perry K. Geller, Sr.  
Organization Member

Dated: 9-23-02