

PUBLIC LAW BOARD NO. 6920

AWARD NO. 11

CASE NO. 11

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees Division
International Brotherhood of Teamsters

vs.

Kansas City Southern Railway Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained

STATEMENT OF CLAIM:

“We are hereby submitting an appeal in accordance with RULE 34, of the agreement between the Kansas City Southern Railway Company-MidSouth Rail Corporation/South Rail Corporation (KCS-MSRC/SRC) and its employees represented by the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED-IBT), concerning the Director, Labor and Office Administration, C.L. Wright’s decision dated June 21, 2007 to issue a Written Reprimand to (KCS-GWRC) employee R. J. Given, for alleged violation of the Kansas City STAR Book page iv items 2 and 3 and the Kansas City Southern General Code of Operating Rules 1.1, 1.1.1 and 1.1.2, as a result of an investigation held June 14, 2007 in the Kansas City Southern Depot Mexico, Missouri.”

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.

The instant claim was submitted to the Board directly on the record developed by the parties on the property. Our review of that record does not reveal any procedural irregularities that require comment by us.

Claimant was issued a Written Reprimand for his responsibility in connection with suffering an injury to the middle finger tip of his right hand on April 30, 2007. At the time of the incident, claimant had some twenty-eight and one-half years of service. The record does not establish that he had any previous similar discipline.

On the day of the injury, claimant and his co-worker had replaced a section of rail using their hi-rail capable truck crane. They had worked together for many years and both were quite familiar with the operation of the truck crane. The truck crane work required that the two hydraulic stabilizers be deployed onto the ends of a tie. With the truck in the hi-rail position, moving around the sides of the truck required claimant and his foreman to walk on the sloped portion of the track ballast.

They had finished loading the removed rail for movement to a scrap pile. Claimant had secured the rear end of the rail for the movement. His foreman operated the controls on the driver's side of the truck to retract the two stabilizers for the movement to the scrap pile. According to the record, it appears to the Board that claimant began to move toward the front of the truck to enter the passenger side as the stabilizers were retracting. As he moved forward, unstable ballast in the sloped portion dislodged and caused claimant to lose his footing. Claimant instinctively reached toward the truck to steady himself. At that precise moment, his finger tip fell into a pinch-point in the stabilizer mechanism that effectively closed on his finger before he could react. The pinch shocked claimant and caused the loss of much of the flesh of his finger tip to expose the bone. He recalled essentially nothing about what was said between he and his foreman during the moments following the injury. The injury required shortening the bone to permit the remaining flesh of the finger tip to be closed over the wound. This was accomplished without any loss of work time by claimant.

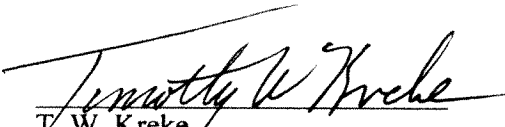
Our review of the record convinces us that claimant's injury resulted from a freak accident. The record does not establish that claimant was engaged in any careless or negligent activity at the time. Accordingly, the claim must be sustained. The Carrier is directed to expunge from claimant's work records all references to the Written Reprimand.

AWARD:

The Claim is sustained. The Carrier is directed to comply with this Award within thirty (30) days of the date hereof.



Gerald E. Wallin, Chairman
and Neutral Member



T. W. Kreke,
Organization Member



J. G. Albano,
Carrier Member

Date: Jan 20, 2011