

PUBLIC LAW BOARD NO. 6920

AWARD NO. 12

CASE NO. 12

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 Administration, T.L. Robertson’s decision dated December 27, 2007 to issue a Written Reprimand to (KCS-GWRC) employee A. L. Clark, for alleged violation of the Kansas City Engineering Department STAR Book, Star Safety Statement, KCS Safety Principles 2, 3 and 4, Core Safety Rule 17 and E-28 (12-B) and the Kansas City Southern General Code of Operating Rules 1.1, 1.1.1 and 1.1.2 and 1.6(1), as a result of an investigation held December 21, 2007 in the High Oak yard General Office, 650 Childre Road, Pearl, Mississippi.”

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. No procedural shortcomings of significance are noted in the record.

Claimant was issued a Written Reprimand for his responsibility in connection with an injury sustained by a co-worker on October 11, 2007. At the time of the incident, claimant had some four years of service without any prior disciplinary incidents.

The co-worker was injured when the two employees were engaged in removing an unusually tight spike. Claimant went to their truck and brought back a mundy maul and a spike lifter. The

spike lifter is similar in appearance to a sledge hammer on one end of the head. The other end, however, looks like a wedge-shaped two-pronged fork that fits under the head of a spike. When struck by the maul, the wedging action of the fork forces the spike to rise.

After placing the lifter under the head of the reluctant spike, the co-worker held the handle of the lifter while claimant struck it with the maul. At that moment, a piece of steel chipped off the head of the lifter and hit the co-worker just above the right knee cap. The steel chip apparently had sharp edges and flew with enough velocity to cut through the co-worker's work pants and lacerate him just above the knee.

Although the Carrier has a requirement that the striking surface of tools should be surrounded by a piece of rubber hose, the testimony in this case does not establish that the Carrier provided any such material to this crew. Moreover, the chip flew off of the tool being struck and not the maul, which was the striking tool. Thus, on this record, even if the maul had rubber material surrounding its head, it would not have prevented the chip from flying off of the struck tool. Indeed, even the testimony of the Carrier's lone witness shows he did not believe that any rubber material would have prevented the injury. Finally, it is undisputed in the record that claimant and the co-worker were following the safe and normal procedure for using the spike lifter.

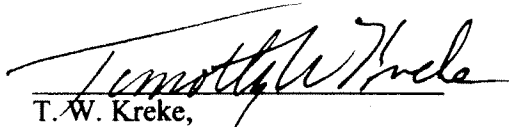
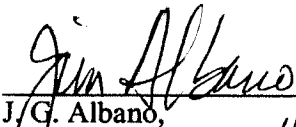
Given the foregoing, our review of the record establishes that the co-worker's injury resulted from a freak accident and not any violation of working rules. The record does not establish that claimant was engaged in any careless or negligent activity at the time. Accordingly, the claim must be sustained. 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

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Date: 