

AWARD NO. 42

CASE NO. 54

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATE OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The fifteen (15) days actual suspension of A.B. Canaday, Lo-Boy operator, was improper, without just and sufficient cause and wholly disproportionate to the alleged offense (Carrier File No. D-11-16B-99).
- (2) Lo-Boy Operator A.B. Canaday's record be cleared and he be compensated for all time lost because of violation referred to within Part (1) of this Statement of Claim."

OPINION OF BOARD:

Claimant is employed as a Lo-Boy Operator on Carrier's Western Division. On October 10, 1977, Mr. Canaday was preparing to unload an electric tamper at Rushville, Nebraska. Claimant lined up the truck with the rail onto which the tamper was to be placed and removed the four corner tie down chains. When he realized the trailer was not properly aligned with the track, Claimant got back into the truck to move it into proper position. As the truck moved the tamper rolled off the truck onto the rail, hitting another machine, and damaging the tamper.

A formal investigation of the incident was held November 11, 1977. As a result of this investigation Claimant was required to serve a fifteen (15) day suspension.

There is no dispute on the record that Mr. Canaday was responsible for the safe operation of the Lo-Boy in accordance with Rule 1011 of the Rules of the Engineering Department. We do not find support on the record for the Organization's argument that charges against the Claimant are not supported by testimony introduced at the investigation. To the contrary, Mr. Canaday has admitted both responsibility for the safe operation of his equipment and failure to secure the four corner tie down chains before adjusting the position of his truck. Nor do we find evidence that the proceedings were "tainted" by testimony regarding dollar value of the damage to the tamper.

Mr. Canaday testified that it was his practice to move the truck without re-securing the corner chains if the distance was short or he was unloading a machine. Claimant's testimony does not exonerate his negligence in the instant case as "the only time when an accident happened". It serves only to point out an apparent pattern of behavior which up to the present incident had luckily produced ^{no} adverse results. Further, Claimant's protestation that the Lo-Boy was overloaded would indicate that special precautions should have been taken with respect to the safety of the tamper.

Upon careful review of the record, therefore, we find that discipline assessed was not "excessive, capricious, improper, or unwarranted" as maintained by the Organization. Accordingly, the claim is denied.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:


1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;


2. that the Board has jurisdiction over the dispute involved herein;
and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: 5/17/79