

AWARD NO. 1

Case No. 1

Organization File No. A010206.0

Carrier File No.

PUBLIC LAW BOARD NO. 7460

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
)
TO)
)
DISPUTE) PADUCAH & LOUISVILLE RAILWAY

STATEMENT OF CLAIM:

1) The discipline [suspended for a period of sixty (60) days beginning at 0001 hours November 19, 2005 and ending 2359 hours January 17, 2006] imposed upon Mr. K. E. Oliver for alleged violation of Paducah & Louisville Railway Roadway Worker On-Track Safety Manual Rules 1.2, 1.6 and 1.58, in connection with the impact collision involving the Tamper Tie Inserter (TKO-01), the Kershaw Rotary Scarifier (RS-1) and the Kershaw Tie Inserter (KTI-1) resulting in derailment of the RS-1 and his personal injury, was arbitrary, capricious, unwarranted in violation of the Agreement.

2) As a consequence of the violation referred to in Part (1) above, Mr. K. E. Oliver shall now be afforded the remedy prescribed by the parties in Rule 30(g).

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated December 16, 2010, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The essential facts in this case are not in dispute. On October 6, 2005 Claimant was temporarily assigned to operate the Tamper Tie Inserter, an on-track machine, in the vicinity of East View, Kentucky. Claimant's machine was the fourth of six machines traveling south to the next

work location. After taking a siding to allow other equipment to pass, the machines re-entered the Main Line. After proceeding approximately 600 yards, the machines ahead of Claimant came to a stop in order to load kegs of spikes. Claimant, according to his own testimony, had been looking at the machine behind him. When he turned around, he saw the stopped machines but it was too late to stop before hitting the machine ahead of him, the Rotary Scarifier, which then struck the Tie Insertor ahead of it and derailed. Claimant sustained an injury in this collision.

Claimant and the operators of the other two machines were consequently directed to attend a formal investigation in connection with this incident. Following the investigation, Claimant was assessed a sixty day suspension.

At the investigation, Claimant gave the following testimony:

Q. Why did you not stop before you hit Mr. Dulaney's machine? Was there a reason other than you just looking back?

A. Yeah, I looked back to see where Steve Horn was and how much clearance we had before the nails. I turned back around and they were already stopped on me.

Q. From what you're saying, basically, by the time you realized you were going to hit Mr. Dulaney's machine, it was too late to stop?

A. Right.

Claimant explained that he looked back at Mr. Horn "because he is always riding my butt."

The record also established that the machines ahead of Claimant's did not have brake lights or radios, and Claimant's machine was not equipped with mirrors.

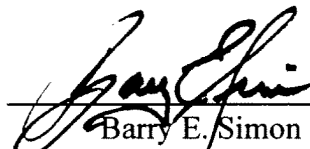
Based upon our review of the record of the investigation, the Board finds that there was substantial evidence to support the Carrier's conclusion that Claimant was responsible for the collision resulting in his personal injury and damage to the track equipment. It is evident that the

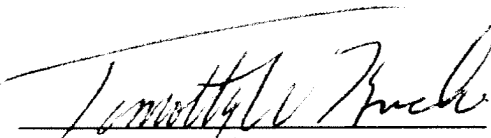
collision could have been avoided had Claimant been diligent about watching the machines ahead of him.

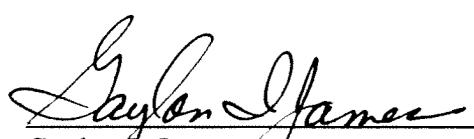
With respect to the level of discipline imposed, the Organization argues the assessment of a sixty day suspension was excessive. It points out that Claimant had 19 years of unblemished service at the time of this incident. It also cites the lack of brake lights, mirrors and radios on the machines as a contributing factor. The Carrier responds by arguing that it has already taken these factors into consideration. According to the Carrier, there is sufficient arbitral precedent that incidents such as this would normally warrant an employee's dismissal.

In view of the record before us, the Board determines that the assessment of a sixty day suspension in this case was neither arbitrary nor unreasonable. The Agreement was not violated.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Timothy W. Kreke
Employee Member


Gaylon I. James
Carrier Member

Dated: July 24, 2011
Arlington Heights, Illinois