

Award No. ²⁶
Case No. 83

Public Law Board No. 2778

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

The five-day overhead suspension imposed on Machine Operator W. L. Steck was arbitrary, capricious and unwarranted and shall be expunged from his record.

FINDINGS:

A collision occurred in the vicinity of Lewis Run, Pennsylvania, when an unattended tie handler moved down the track and struck a spike puller. Damage in the amount of \$1,643.55 resulted.

After a hearing had been held in the matter, Carrier found that the accident took place because of claimant's failure to secure properly the tie handler.

Claimant denied that he had been at fault and testified that the machine had broken down several days before the collision because of problems with the button that clamps the tie. According to claimant, other operators had previously reported that the tie the boom was secured to had risen about 15 inches and moved sideways while the engine was in operation. Claimant's foreman testified that he did not observe the manner in which the

machine was secured.

Assistant Supervisor Lasker testified that he checked the brakes immediately after the accident and found them in good order and that the machine would not have moved if they had been properly set. It is his testimony that the boom would not have risen materially if properly secured to the tie. There is no evidence that anyone tampered with the tie handler.

As an appellate board that does not observe the witnesses and their demeanor, we are not in a position to resolve issues of credibility. It is our conclusion that Carrier's finding that the accident would not have occurred if claimant had used due care is supported by credible evidence and are not arbitrary or unreasonable. The claim will be denied.

AWARD:

Claim denied.

Adopted at Baltimore, Maryland, *February 22,* 1984.



Harold M. Weston, Chairman



Carrier Member



Employee Member