

PUBLIC LAW BOARD - No. 3514

Case No. 124 Award No. 119

<u>PARTIES</u>	Consolidated Rail...	Brotherhood of Maintenance
to	Corporation	and of Way Employees
<u>DISPUTE:</u>		

STATEMENT OF CLAIM:

Appeal of Machine Operator L. J. Gonzales
to have discipline of dismissal set aside
and be restored to the service.

FINDINGS: In this dispute, the Claimant was required to attend a hearing to develop facts and determine responsibility concerning his operation of a tie handler at the time it struck and injured a fellow employee.

Subsequent to a hearing, the Claimant was found guilty of violating the Carrier's Safety Rules and he was dismissed from the service.

Unquestionably, we are impressed with the Organization's arguments in the record and before this Board. Similarly, the Carrier has presented its thorough analysis of the events and circumstances which contributed to the dispute before us.

The Organization contends that the Carrier has failed on two counts to carry its burden. First, it maintains that the Claimant was not afforded a fair and impartial hearing, and second, that notwithstanding, the Claimant was not totally responsible for his

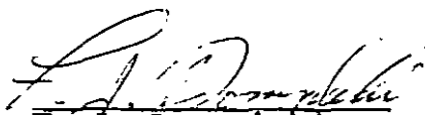
machine striking the other employee, because the machine did not have an operative horn to warn people and because he was operating it in accordance with the instructions of his Supervisor.

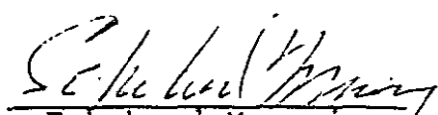
After our thorough review of the record, while we do not easily set aside the Organization's contentions, we conclude that the claim must fail. With respect to the hearing, it is clear that the Claimant and the Organization were not impaired in their presentation and the Claimant was provided full opportunity to question the key witnesses and explain what occurred on and before the day of the incident.

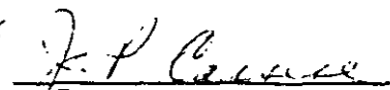
Concerning the merits, certainly it is not unreasonable to conclude that others might have shared in the responsibility for the incident. However, the Rule used for the charge herein is clear and specific with respect to the Claimant's responsibility. The evidence is convincing that the Claimant did not comply with the Rule. Moreover, the Claimant testified that he had a whistle that was to be used to alert others of the movement of his machine. In the incident here, he testified that he did not blow the whistle before he struck the other employee. In view of all the facts and circumstances prevalent herein, we cannot sustain the claim.

AWARD

The claim is denied.


F. J. Domzalski
Carrier Member


Eckehard Muessig
Neutral Member


J. P. Cassese
Employee Member

Dated: DEC 4 1966