

PUBLIC LAW BOARD NO. 3765

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

vs.

GRAND TRUNK WESTERN
RAILROAD COMPANY

Case No.: 72

STATEMENT OF CLAIM

Claim appealing disqualification of J.
Master as Tamper Technician I, as a
result of investigation held on November
21, 1994, in Pontiac, Michigan.

OPINION OF THE BOARD

Claimant J. Master was employed by Carrier in July
1977. On October 25, 1994, he was working as a Tamper
Technician operating a Plasser Roadmaster 2000 when one of
the workheads fell and struck an interlocker diamond. There
was approximately \$25,000 worth of damage to the equipment.
As a result of this accident, Claimant was sent the follow-
ing notice to attend an investigation into the matter:

This investigation is to determine your responsibility, if any, for alleged negligence as Tamper Operator Technician I of improperly securing of righthand workhead while operating Plasser Roadmaster 2000 (Rdmstr #1) at Warner Interlocker, Shore Line Subdivision, Mileage 18.7, on Tuesday, October 25, 1994, at approximately 1145 Hours, which resulted in the righthand workhead striking the Warner Interlocker diamond causing approximately \$25,000 in damages.

A hearing in the matter was held on November 21, 1994. As a result of that hearing, Claimant was found guilty as charged and disqualified as a Tamper Technician I.

This Board has reviewed the record and transcript of the investigation in detail. As a result of that review, we conclude that Carrier acted in an arbitrary and capricious manner when it disqualified Claimant as a result of the October 25, 1994, accident. There is no probative evidence in this record to support the notion that Claimant was in any way responsible for the workhead dropping down and striking the diamond. Numerous Carrier witnesses testified that Claimant was a good operator, performed all the required safety checks, and had had no problems with operating the machine during his year on duty. There was also testimony in the record that technical problems with the machine had occurred in the past.

In meeting its burden of proof, Carrier must base its case on solid evidence. It appears that it rushed to judgment in order to place the blame for a damage bill of over \$21,000. That action was inappropriate in this instance.

AWARD

Claim sustained.

R. E. Dennis

R.E. Dennis,
Neutral Member

R. J. O'Brien dkk

R.J. O'Brien,
Carrier Member

D. Bartholomay

D. Bartholomay,
Employee Member

February 20, 1996

Date of Adoption