

**PUBLIC LAW BOARD NO. 5564**

<b>Brotherhood of Maintenance of Way</b>	)	
<b>Employees</b>	)	<b>AWARD NO. 30</b>
	)	<b>CASE NO. 30</b>
<b>and</b>	)	
	)	
<b>Northeast Illinois Regional Commuter</b>	)	
<b>Railroad Corporation</b>	)	

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that the discipline [three (3) day deferred suspension] imposed on Claimants M. Rangel and J. Campos by letter dated July 13, 2009 in connection with allegations that the Claimants failed to secure equipment prior to traveling to the siding at Round Lake on May 15, 2009 was without just and sufficient cause and in violation of the Agreement.”**

**OPINION OF BOARD:**

**Public Law Board No. 5564, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.**

**By letter dated May 21, 2009, Claimants were directed to attend a formal investigation on May 28, 2009 in connection with their alleged “failure to properly secure equipment prior to traveling to the siding at Round Lake on Friday, May 15, 2009 at 2:30 p.m., when equipment allegedly struck the grade crossing, causing injury to an employee standing up.”**

**The investigation was postponed until June 24, 2009, and on July 13, 2009, Claimants were both issued three (3) day deferred suspensions. The Organization submitted a claim challenging the discipline on September 9, 2009, which the Carrier in turn denied on October 2, 2009, and at every step thereafter, in accordance with applicable grievance procedures in the parties’ Collective Bargaining Agreement. The matter is now before the Board, free of procedural defect, for final and binding determination as to its merit.**

**Claimants were assigned as machine operators on a tie installation gang on May 15, 2009. At approximately 2:30 p.m. on that date, Claimant Rangel was**

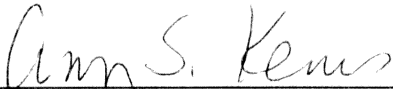
operating spiker machine SDG 71302 westbound in traveling mode when the rail clamp on his machine struck the Cedar Lake grade crossing. Upon impact, another employee, standing as a passenger in the cab of the machine, sustained an on-duty injury. At the subsequent investigation, it was established that Claimants Rangel and Campos were mutually responsible for preparing SDG 71302 for travel, and so were charged with ensuring that all rail clamps were in the retracted position prior to movement. The Organization asserted that Claimants had indeed fulfilled their duty to that end, and thus a hydraulic failure must have caused the offending rail clamp to “bleed off” and descend into the working position while the machine was on the move. In response, the Carrier argued that the spiker machine operated by Claimants was thoroughly inspected after the incident and found to be without functional defect or flaw. Moreover, the Carrier argued, SDG 71302 was used again after the occurrence, and no mechanical problems were reported and no repair work was required.

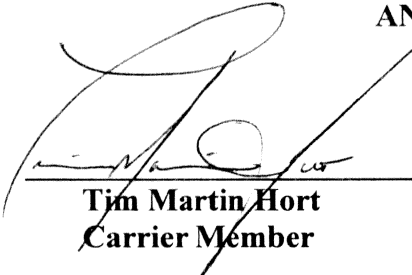
After careful review, the Board finds that there is substantial evidence on the record to support the charge that the Claimants failed to adhere to the safety and operating rules cited in the notice of investigation. The record clearly establishes that Claimants were mutually responsible for preparing their machine for travel, and their failure to adequately do so in accordance with Carrier safety rules caused impact with a grade crossing and injury to another employee. While the Board understands the Organization’s defense, the record indicates that the machine was thoroughly inspected after the incident and found to be working properly in every material respect. Furthermore, the machine was used again shortly after the accident and no defects were reported. Importantly, these facts are not disputed by the Organization. Therefore, we find nothing capricious in the Carrier’s conclusion that Claimants failed to adequately ensure the security of the rail clamp prior to operating the spiker in travel mode.

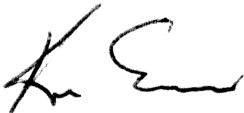
As to the discipline assessed, the Board concludes, based upon this record, that the 3-day deferred suspensions issued in this case were neither excessive nor unreasonable. Claimants’ actions (or more accurately their negligence) caused an otherwise preventable employee injury and could have damaged Carrier equipment. For that and all the foregoing reasons, then, we find that the Collective Bargaining Agreement was not violated. The corrective action taken by the Carrier under these circumstances was both warranted and appropriate, and therefore, we will not rule to modify it to some lesser penalty. The claim is denied.

AWARD

Claim denied.

  
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**ANN S. KENIS, Neutral Member**

  
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**Tim Martin Hort  
Carrier Member**

  
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**Kevin Evanski  
Organization Member**

Dated this 30 day of August, 2013.