

PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) DIVISION OF THE INT'L BROTHERHOOD OF TEAMSTERS
 TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assessed Trackman W. P. Perro thirty (30) calendar days suspension for allegedly being negligent in the performance of duties on May 5, 2007.
2. As a consequence of the violation referred to in Part (1) above, Claimant Perro shall now have his record cleared of this incident and be compensated for all wage losses suffered.

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

On May 5, 2007 Claimant was assigned to operate a Tamper/Liner on the main line from Deering Junction to Danville Junction, operating immediately behind a High Rail Truck. When the High Rail Truck stopped at MP 182.9, Claimant failed to bring the Tamper/Liner to a stop. The Tamper/Liner hit the High Rail Truck, causing damage to the truck's high-rail wheels that required three to four days of repair work.

As the Carrier submits, there were no obstructions or visual impairments involved, and the accident occurred on a long, straight portion of track. The Carrier submits that the record supports the conclusion the accident was due to operator error; not any mechanical defect. In this respect, the Carrier says, and the record supports, Claimant had operated this machine before and was thus familiar with its braking power and stopping distance. Moreover, the record shows Claimant had, in fact, made a number of stops with the Tamper/Liner during the trip without incident.

The Organization has offered vigorous argument in defense of Claimant both on the merits of the dispute and in contentions of procedural error.

The Board has carefully considered the several procedural arguments offered by the Organization. While not a perfect hearing, we do not find reason to declare a mistrial or reason to hold that other procedural issues raised are of sufficient basis to set discipline aside.

In regard to the merits of the issue, the Board finds the record to support the conclusion that the accident was the result of Claimant negligence. It is noteworthy, as the Carrier points up, that Claimant stated: "[My] attention must have been looking at the roadway. I looked up, the truck was there, I pulled the maxi brake and it collided with the truck." Further, when asked why he could not stop in time, Claimant said: "I just figured we were going through the towns, probably could be more attentive at the process." Claimant also said: "I was probably looking down at the roadbed."

Claimant's discipline record shows a prior five-day suspension in a failure to remove blue flag protection in Rigby Yard and a 15-day calendar day suspension in connection with having left a main line switch in an improper position.

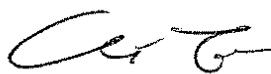
The Carrier having shown just cause for the imposition of discipline, and the 30-day calendar suspension at issue not being found to be harsh or excessive, the claim will be denied.

AWARD:

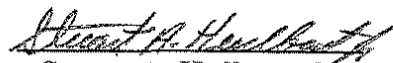
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated Sept. 16, 2008