

PUBLIC LAW BOARD NO. 6920

AWARD NO. 13

CASE NO. 13

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees Division
International Brotherhood of Teamsters

vs.

Kansas City Southern Railway Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained

STATEMENT OF CLAIM:

“We are hereby submitting an appeal in accordance with RULE 34, of the agreement between the Kansas City Southern Railway Company-MidSouth Rail Corporation/South Rail Corporation (KCS-MSRC/SRC) and its employees represented by the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED-IBT), concerning the Director, Labor and Administration, T.L. Robertson’s decision dated April 30, 2008 to issue a Written Reprimand to (KCS-MS/SR) employee S. T. Burmaster, for alleged violation of the General Code of Operating Rules 1.1, 1.1.1 and 1.1.2 and 1.6(1) and the Kansas City Southern Engineering Department STAR Book, Star Safety Statement, KCS Safety Principles 2, 3 and 4, Core Safety Rules E-4(j) & E-8, as a result of an investigation held April 21, 2008 at the Kansas City Southern Railway Yard Office, 107 Main Street, Artesia, Mississippi.”

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The instant claim was submitted to the Board directly on the record developed by the parties on the property.

Claimant was issued a Written Reprimand for his responsibility in connection with an injury he suffered on February 12, 2008. At the time of the incident, claimant had approximately eight and one-half years of service. The record does not establish any prior disciplinary incidents in his work history.

According to the record, claimant and his foreman were in the process of removing the jack beam from the back of Truck MW3632 at approximately 1445 that afternoon. Claimant's co-worker was operating the boom on the truck while claimant hooked the boom cable to the jack beam. After accomplishing the hookup, claimant began to get out of the way and dismount the truck before the lift was to be made. Claimant did not signal his co-worker to begin the lift. However, claimant's co-worker, on his own initiative, attempted to take up the slack in the boom cable by bringing it under tension. The co-worker was looking up at the boom observing the cable and was not watching claimant at the time. There was less slack in the cable than the operator expected. The tensioning caused the jack beam to slide sideways and strike claimant as claimant was trying to dismount the truck. Claimant injured his left elbow, but it did not require medical treatment nor did he lose any time from work.

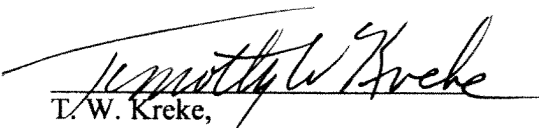
Given the foregoing factors, our review of the record establishes that claimant's injury resulted from actions of another employee beyond his control. The record does not establish any violation of working rules by claimant. Moreover, the record does not establish that claimant was engaged in any careless or negligent activity at the time. Accordingly, the claim must be sustained. The Carrier is directed to expunge from claimant's work records all references to the Written Reprimand.

AWARD:

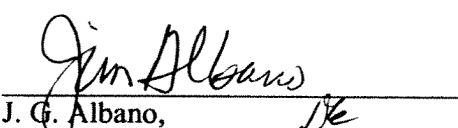
The Claim is sustained. The Carrier is directed to comply with this Award within thirty (30) days of the date hereof.



Gerald E. Wallin, Chairman
and Neutral Member



T. W. Kreke,
Organization Member



J. G. Albano,
Carrier Member

Date: Jan 20, 2011