

SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NOS. 140
CASE NO. 140

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISIONS: Claim sustained in accordance with the Findings of the Board.

DATE: May 21, 2001

STATEMENT OF CLAIM:

“Claim of ~~the~~ System Committee of the Brotherhood that:

1. The dismissal of Machine Operator S. **McElvene** for his responsibility in the collision involving Machine TS-1003, which resulted in personal injuries and equipment damage, was arbitrary, capricious, excessive and in violation of the Agreement (System Docket MW-5088-D).
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall receive the remedy prescribed by the parties in Rule 27, Section 4.”

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.

Claimant had some twenty-one years of service with seniority as a Class 1 Machine Operator during the relevant timeframe. At approximately noon on June 18, 1997, Claimant was operating his track stabilizer at 11 miles per hour. He applied both the train and machine air brakes at approximately 211 feet from his stopping point. Upon his applying the brakes, the Claimant allegedly heard a loud popping noise emanating from beneath his machine. His efforts

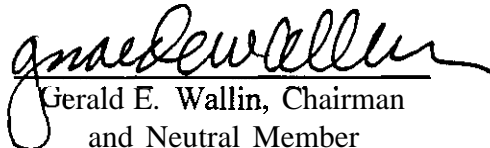
failed to stop the machine. Claimant panicked and applied emergency brakes by “dumping” the air on the train brakes and began yelling warnings over the radio. The track stabilizer struck a stopped Ballast Regulator BR5010 which, in turn, struck a Jackson Tamper MJ6702. As a result, Claimant and two other employees suffered personal injuries.

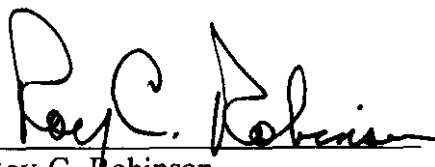
A Carrier investigation determined that the brakes on Claimant’s machine were working properly. Carrier performed several stopping distance tests using the machine at the same location.

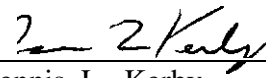
The Board recognizes the importance of Carrier’s insistence upon the safe operation of its machines and equipment. However, the record in this case reveals unique and extenuating circumstances sufficient to warrant finding that Claimant should be offered reinstatement to his former employment, subject to passing Carrier’s return to duty requirements, with seniority and other rights of employment unimpaired **but without** back pay.

AWARD:

Claim sustained in accordance with the Findings of the Board.


Gerald E. Wallin, Chairman
and Neutral Member


Roy C. Robinson,
Organization Member


Dennis L. Kerby,
Carrier Member