

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 625

Docket No. 625
File 930501

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Union Pacific Railroad Company
(Former Missouri Pacific)

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when L. E. Foster, SSN 587-12-6222, was restricted from working as a Machine Operator for a period of one (1) year on May 5, 1993.

(2) Claim in behalf of L. E. Foster for removal of the discipline from his record and the difference in pay between his assignment and Machine Operator.

Findings: This Board has jurisdiction of this case by reason of the parties Agreement establishing the Board therefor.

The Claimant, on March 5, 1993, was working as a Machine Operator and was involved in two incidents which caused the holding of a formal investigation. The notice of charges of the formal investigation held on April 6, 1993 read:

"... at approximately 1:15 p.m. you allegedly failed to operate the TRIP 03 in a safe manner causing a personal injury to Trackman J. Lighten when you struck him when making a reverse move with this equipment. Also, at approximately 2:30 p.m. on March 5 you allegedly, while backing into Track #10 at Newport, AR, struck the RLP 06 resulting in damage to the RLP 06."

The Carrier concluded from the record made that the Claimant was culpable of the charges placed against him. Therefore, on May 5, 1993 the Claimant was restricted for a period of one year from the date of the letter from working any and all positions in the Machine Operator Sub Department on a System, District, or Division Gang in the Machine Operator Sub Department seniority territories.

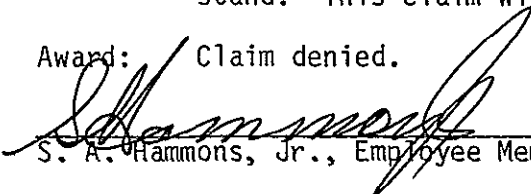
The Claimant was accorded the due process to which entitled under his discipline rule.


There was sufficient evidence adduced to support the Carrier's conclusion of culpability. While Claimant testified that he was unaware of hitting Trackman J.


Lighten, he did admit that when he was backing into Track #10 at Newport, AR, he did strike the RLP 06. The injured Trackman's testimony supports the Carrier's conclusion that the Claimant was operating the vehicle that injured him.

The Carrier having found cause to issue discipline examined the employee's past discipline record which indicated a continuing degree of negligence as an operator. The Carrier is the proper authority to render judgment as to the capability of the employee to operate equipment. No cause has been shown to require the Board to find the Claimant innocent. The restriction, unfortunately, will stand. This claim will be denied.

Award: Claim denied.


S. A. Harmons, Jr., Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member