

SPECIAL BOARD OF ADJUSTMENT NO. 956

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES**

And

**NEW JERSEY TRANSIT RAIL
OPERATIONS, INC.**

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**AWARD NO. 132
CASE NO. 132**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Class I Operator Wayne Rasavage for his alleged violation of ... "NORAC Rules D and S, TRO-5 Rule 52, MW252 Rules 10, 20 and Appendix C Rule 3323 which states in part: 'Prior to the movement of any railway freight car by a piece of M of W equipment, a Train Line Automatic Air Brake Test will be conducted.' was without just and sufficient cause. (Carrier's File BMWE 34-8-05D).**
- (2) Operator Wayne Rasavage shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered. "**

FINDINGS:

Special Board of Adjustment No. 956, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employes 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.

Based on a review of the record evidence, the Board finds that the Carrier provided substantial evidence that the Claimant violated Carrier rules as charged when, on July 14, 2005, he failed to hook up the air hoses and perform the brake test after coupling a crane to a flatcar at Peddler's Square Siding in Newark, New Jersey. As a result of the Claimant's negligence, the flat car uncoupled from the crane and traversed a distance of 4.5 miles before an engine brought it under control.

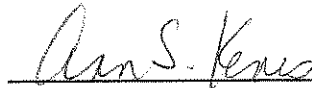
There is no question as to the seriousness of the incident. However, we find that the Claimant's lapse of judgment appears to be isolated to the incident at bar

and does not reflect the skill and dedication with which he has generally served the Carrier. In that regard, we note that the Claimant has 26 years of service and an unblemished disciplinary record. Moreover, Management employees attested at hearing that he has been an asset to the Carrier. Under these circumstances, the Board finds that the penalty of permanent dismissal is excessive. Claimant shall be given the opportunity to regain his employment and to demonstrate that he can diligently perform his job duties in the future. He shall be returned to work, without pay for time lost, and contingent upon the following conditions:

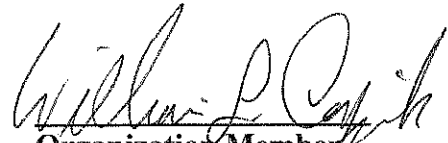
- Claimant must take and pass a return to work physical;
- Claimant will take and pass any rules and/or safety examinations deemed relevant by the Carrier;
- Contractual benefits shall be restored effective January 1, 2006.

AWARD

Claim sustained in accordance with the Findings.



ANN S. KENIS
Neutral Member


Carrier Member
Organization Member

Dated February, 16, 2006