

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. 148
CASE NO. 148**

STATEMENT OF CLAIM:

Claim on behalf of A. Baroni, Class II Operator, for expungement of discipline assessed, payment for all time lost, and reimbursement for benefits lost during time withheld from service.

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.

On November 4, 2003, at approximately 7:15 p.m., the Claimant was operating the on-track Lag Machine NL202. After finishing one section of the out of service track, the Lag machine proceeded east to the next work location. The conditions were dark and rainy. Traveling around a curve, the Lag machine collided with one of two welding trucks stopped on the tracks ahead, resulting in damage to the equipment.

The Carrier charged the Claimant with failing to control the speed of his equipment to permit stopping within half his range of vision or short of other equipment occupying the track. After several postponements, a hearing took place on March 23, 2005. Following the hearing, the Claimant was assessed a five day suspension.

The basis for the Organization's appeal is that the discipline lacked sufficient cause. The Organization argues that there were several factors that should have been taken into consideration by the Carrier. Specifically, the Organization points out that the Claimant was not informed that there was other equipment left out on the track; the documentation known as "Form D" was not furnished to the Claimant. In addition, the Organization asserts that the weather was inclement and the equipment was being operated in a reverse position. Moreover, there was such minimal damage to the equipment that the matter was not investigated until the

next morning. These factors suggest to the Organization that the discipline imposed was excessive and unwarranted. In the view of the Organization, therefore, the claim should be sustained.

Carrier contends that the charges were proven and the discipline was appropriate based on the nature of the misconduct. Carrier rejects the Organization's assertion that mitigating or extenuating circumstances should reduce the penalty imposed. The claim, therefore must be denied.

After careful consideration, the Board finds that there is substantial evidence to support the charges directed against the Claimant. As Track Supervisor Felice explained without probative rebuttal, the Claimant was operating at an excessive speed based on the operating conditions at the time. Claimant was subject to NORAC Operating Rule 80, which pertains to movement at restricted speed. Pursuant to that rule, he was required to make sure that the movement was controlled so as to permit stopping within one half the range of vision short of other railroad equipment occupying the track. The record shows that the Claimant failed to adhere to this important safety rule.

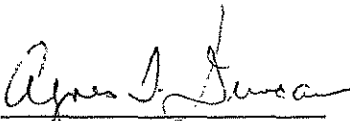
The Organization's principal argument is that there were extenuating circumstances on the date of the incident that should have been taken into consideration in the assessment of discipline. In the Board's view, the circumstances relied upon by the Organization require a different conclusion. Even in inclement weather, and regardless of whether there is prior notice of equipment ahead on the track, it was the Claimant's responsibility to be vigilant, to make sure that the Lag machine maintained a controlled movement to be able to stop safely. Moreover, the record shows that it was not unusual to operate the Lag machine in reverse on the tracks. The Organization's asserted defenses merely highlight the necessity for adhering to the safety rules, something Claimant failed to do in this instance.


The Organization's remaining arguments are similarly without merit. The record shows that the equipment had permission to occupy the tracks, so a Form D was not required. In addition, the fact that the Carrier waited until morning to investigate the incident does not change the result or shift responsibility for the collision to the Carrier. The Claimant's failure to remain alert and control his movement on the date of the incident resulted in a breach of the Carrier's safety rules. We must conclude that the 5-day suspension under these circumstances was within the range of reasonableness properly afforded to the Carrier in the exercise of its discretion. Accordingly, we rule to deny the claim.

AWARD

Claim denied.


ANN S. KENIS
Neutral Member


Carrier Member
Agnes Duncan


Organization Member
William Capik

Dated this 15th day of OCTOBER, 2008.