

SPECIAL BOARD OF ADJUSTMENT NO. 956

**BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES)
and)
NEW JERSEY TRANSIT RAIL)
OPERATIONS, INC.)**

**AWARD NO. 151
CASE NO. 151**

STATEMENT OF CLAIM:

Claim on behalf of M. Radoesky, 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.

By notice dated November 25, 2003, Claimant was advised to attend a hearing in connection with the following charges:

On November 19, 2003, at approximately 3:30 a.m. on the Montclair Line at MP 18.2 in Little Falls, NJ, you were operating a piece of on-track production equipment as part of the Capital Tie Gang which was traveling westward toward Dover. After crossing Lindsley Road crossing on the Montclair Line, you operated your machine in a manner that prevented you from stopping safely, causing you to collide into the track machine in front of you. Nine other track machines ahead of and behind you were involved in this collision which resulted in significant and costly damage to several track machines.

A joint hearing was held on December 23, 2003, at which all five of the equipment operators charged in the November 19, 2003 collision were present, as was their Organization representative. Following the hearing, the Carrier determined that the Claimant was guilty of the charges. Claimant was issued a five-day suspension.

The Organization does not dispute the fact that a collision occurred at the time and place set forth in the charge notice. Instead, it contends that there were several mitigating circumstances which should have been taken into consideration before assessing discipline.

The Organization points out that the crew was working late at night on overtime to remove leaves from the tracks to assist the movement of passenger trains. The tracks at the site of the collision were on a curve and a downgrade and they were slippery that evening. Not all the 17 machines operating over the tracks had brake lights. In addition to the lack of visibility, the lead machine did not have a radio, and therefore the operators had no prior warning that machines ahead of them had derailed. The Organization further points out that there was a crossing 600 feet from the incident and the Claimant had stopped at that crossing before proceeding. There is no evidence that he was speeding and in fact he was not charged with operating the equipment at an excessive speed.

Moreover, the Organization contends that the Claimant was struck from behind and was pushed into the equipment ahead of him. Claimant Radoesky testified at hearing that he was slowing down when he was hit by the tamper machine behind him, pushing him into the equipment ahead of him on the tracks. Claimant maintains that the accident was unavoidable.

In the Organization's view, Claimant's testimony, together with all the extenuating factors involved in this collision, demonstrate that the discipline was excessive. Based on all the foregoing, the claim must be sustained in its entirety.

Carrier contends that the charges were proven and the discipline was warranted based on the evidence adduced at the hearing. Carrier notes that there 17 machines on the tracks on the night of the collision. Twelve employees managed to stop without incident. The Carrier argues that the five employees charged in connection with the accident were responsible for their vehicles and it is clear that they were inattentive to safety. Carrier rejects the Organization's assertion that mitigating circumstances should reduce the penalty imposed. On the contrary, the Carrier asserts that the operating conditions should have alerted the Claimant to exercise greater caution. As an experienced operator, he knew or reasonably should have known that greater care should have been exercised based on the operating conditions at the time. The claim, therefore must be denied.

The Board has reviewed the record thoroughly. We find that the Claimant was afforded a fair and impartial investigation and that there were no procedural or due process defects in the handling of the case.

On the merits, the Board is satisfied that substantial evidence exists in the record to support the finding that the charges directed against the Claimant were proven. Under the circumstances, and considering the conditions that existed, we cannot find fault with the Carrier's conclusion that Claimant failed to operate his equipment in a safe manner. The Claimant knew that there was another vehicle ahead of him on the tracks. He was on a slippery track where there was a curve and a downgrade, and visibility was extremely poor due to darkness. As Carrier witness Acconzo correctly stated at hearing, the Claimant should have been prepared to stop short of any obstruction that was ahead of him in light of these operating conditions. He failed to do so.

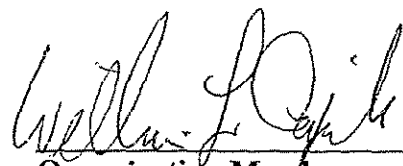
The remaining question is whether the imposition of a five-day suspension was fair and reasonable. With regard to Claimant Radocesky, we find that there were mitigating circumstances which serve to lessen his culpability in connection with this collision. Claimant's equipment was struck from behind and this caused his forward movement into the equipment ahead of him. The Board finds that the penalty should be reduced in light of those circumstances. Accordingly, the five-day suspension shall be converted to a five-day deferred suspension, to remain on the Claimant's record for a period of two years.

AWARD

Claim sustained in accordance with the Findings.


ANN S. KENIS
Neutral Member


Carrier Member
Agnes Duncan


Organization Member
William Capik

Dated this 18th day of October, 2008.