

Award No. 52
Case No. 65
System Docket No. CR-1602-D

SPECIAL BOARD OF ADJUSTMENT NO. 976
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
VS.
CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Appeal of dismissal assessed J. M. McCain on June 12, 1985, in connection with being charged with violation of Safety Rule 3302, paragraphs A, B and E, when as the operator of Junior Tamper ME 3012 on May 6, 1985, failed to operate machine in proper manner resulting in a collision between the Tamper and BU 2205, Switch Undercutter, and \$8,000 damage to equipment and personal injury to a Trackman.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD: Claim disposed of as follows:

We reject the organization's procedural objection and deem the hearing held in absentia to be proper. While it appears the claimant may not have operated the equipment in a proper manner, the record shows that Company witnesses testified that their inspection showed the foot brake was not working 100%. Considering all of factors involved, we find the discipline to be excessive, therefore claimant will be reinstated without compensation for any monetary loss resulting from the discipline.


C. A. Peacock, Neutral Member


F. J. Domzalski, Carrier Member


Jed Dodd, Organization Member

Issued this 7th day of August, 1986.