

SPECIAL BOARD OF ADJUSTMENT NO. 280

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
) TO
DISPUTE) ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

AWARD

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when North of Texarkana Machine Operator L. C. Lindsey was unjustly dismissed in two (2) separate letters on August 22, 1986.

2. Claimant Lindsey shall now be reinstated and paid for all time lost beginning July 16, 1986, and on a continuing basis, with seniority, vacation and all other benefits restored intact." (MW-86-36,37-CB-Lindsey; 53-939,940)

OPINION OF BOARD:

By letter dated July 16, 1986, Claimant, a Memphis Subdivision Machine Operator with a seniority date of May 10, 1971, was withheld from service effective July 16, 1986 pending investigation of his allegedly causing an accident on that date between a brushcutter and the hy-rail pickup that he was operating. By letter dated July 24, 1986, Claimant was also notified that he was being charged with further misconduct resulting from the incident on July 16, 1986. After investigations ultimately held on August 14 and 15, 1986, and by letters dated August 22, 1986, Claimant was dismissed from service.

The thrust of the allegations against Claimant is that he is accident prone. The record demonstrates that Claimant has had numerous on-duty personal accidents which, according to the Carrier, is statistically far greater than the number of incidents involving other employees. Further, Claimant has been involved in several conferences with Carrier officials wherein Claimant's past accidents have been discussed and procedures to avoid

future accidents have been reviewed. With respect to the latest conference held with Claimant in December 1985, in the letter reviewing the conference signed by Claimant, it was made clear to Claimant that failure to obey safety rules would result in discipline.

With respect to the particular accident in this case, eyewitness testimony shows that on July 16, 1986, Claimant was operating the hy-rail vehicle and, while backing up, the hy-rail collided with an unmanned brushcutter. Claimant acknowledged that he was was operating the hy-rail and was involved in a collision after he was given a signal to back up. However, Claimant testified that he did not know the specifics of the incident.

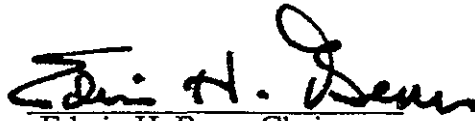
We have reviewed the Organization's arguments that Claimant was not afforded a fair and impartial investigation in that Claimant's being withheld from service pending the investigation amounted to prejudgment of the case; certain evidence offered by the Carrier was improperly received in the record by the Hearing Officer and the fact that the charging officer also made a decision. On the basis of this record, we find those arguments to be without merit.

With respect to the merits of the allegations, we find substantial evidence in the record to support the Carrier's conclusion that Claimant committed the infractions with which he was charged in this matter. See Special Board of Adjustment No. 280, Award 212. However, as in Award 212, we find under the circumstances that dismissal was too harsh a disciplinary action and we shall require that Claimant be returned to service with seniority unimpaired but without compensation for time lost. Claimant is admonished to "to bear in mind the seriousness of safety rules and the importance of his working in a safe manner so as to avoid injury to himself" and others. *Id.*

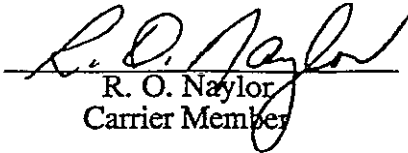
AWARD:

Claim sustained in accordance with opinion. Claimant shall be returned to service

with seniority and other benefits unimpaired but without compensation for time lost.



Edwin H. Benn, Chairman
and Neutral Member



R. O. Naylor
Carrier Member



S. A. Hammons, Jr.
Organization Member

Houston, Texas
November 24, 1987