

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 136

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of R. B. Adams to be made whole by exonerating him of all charges placed against him, reinstating him to the Carrier's service with seniority, vacation and all other rights unimpaired and pay for all time lost as a result of his suspension in connection with improper performance of duty in that as the Roadway Worker in Charge (RWIC) he permitted joint occupancy within working limits without providing clear and concise instructions to each machine operator working within the prescribed limits and failed to establish non-conflicting work limits for two pieces of equipment working under same track authority resulting in a collision between the Brandt Truck and Gradall MC 31 at MP 802.7 on February 27, 2003.

(Carrier File MW-BHAM-03-02-LM-42)

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.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

AWARD

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

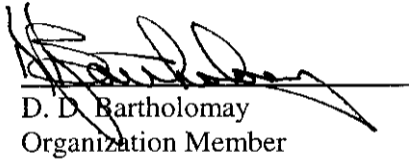
Claimant was suspended for 45 days for his role in a collision of a Brandt Truck and a Gradall on February 27, 2003. The record reflects that, on the date in question, Claimant believed that the Gradall would be working at MP 805 and would not be moving from that position without first communicating with Claimant. The operator of the Gradall, however, believed that Claimant knew he would be working at MP 805 and working his way back east to MP 802. He believed that he was clear to do so and that the Brandt Truck would not be moving into that area without the Gradall operator first being contacted. Claimant, who was serving at RWIC, testified and admitted that at their morning job briefing, Claimant told the Gradall operator to go to MP 805 but did not specifically tell him to stay there. Claimant also admitted he did not know specifically what work the Gradall operator was going to perform at MP 805 or how long it would take him. Claimant's failure to brief the Gradall operator with sufficient specificity contributed to the Gradall occupying the same space as the Brandt Truck and the two machines colliding. The operators of the machines jumped clear of the accident immediately prior to the collision. Had they not done so, they could have suffered serious injuries. As it is, the accident caused considerable property damage. We hold that

Carrier proved the charge by substantial evidence and that the claim must be denied.

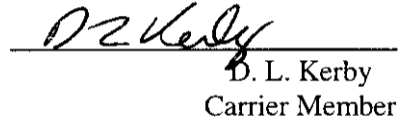
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M. H. Malin
Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on September 14, 2004