SPECIAL BOARD OF ADJUSTMENT NO. 541

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement by failing to hold a fair and impartial hearing for Extra Gang Foreman, Anthony Policastro, before issuing to him discipline of five days actual suspension, effective February 7, 1966.

2. The Carrier improperly held Extra Gang Foreman Policastro responsible for a train hitting a Rail Drill machine on October 5, 1965.

3. Claimant Extra Gang Foreman Anthony Policastro be now reimbursed for the five days loss of pay account of his being suspended from service, in violation of the Agreement.

FINDINGS: Claimant, an extra gang foreman, received a five day suspension on the ground that his carelessness helped cause an accident in which a rail drill machine was struck and demolished by a passing train.

Carrier's findings of fact are supported by credible evidence and the record does not provide a basis for disturbing the discipline. Claimant was well represented at the hearing that was held in this matter and afforded fair opportunity to present evidence and develop his case. The notice of hearing was timely and, as a matter of substance, adequate under the specific facts of this case since Claimant was clearly aware of the nature of the hearing and Petitioner objected to the holding of "a second hearing" and did not seek an extension of time to meet the issues. Claimant conceded that on the day in question he was in charge of the machine that was demolished but neglected to secure personally a train line-up or provide flag protection; his failure to do so constitutes negligence under the facts of the present case.

We are not in a valid position to reverse Carrier's decision in this case involving the safety of personnel and property.

The claim will be denied.

AWARD: Claim denied.

Dated at New York, N.Y. this 29th day of October 1968.

_____/s/Harold M. Weston_____
HAROLD M. WESTON, Neutral

/s/A. J. Cunningham   _/s/R. L. Carroll_
ORGANIZATION MEMBER   CARRIER MEMBER