

SPECIAL BOARD OF ADJUSTMENT NO. 541

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

Erie Lackawanna Railway Company

STATEMENT OF CLAIM:

1. Claim of the System Committee that the Carrier violated the effective Agreement by disciplining Extra Gang Foreman E. E. Valentine with fifteen (15) working days actual suspension for alleged violation of Rule 1006 of Rules and Instructions Governing the Use and Operation of Track Cars effective October 1, 1964, which involved collision of the Backhoe and Train #61 at Dykes, Ohio, August 25, 1967.
2. Claimant Extra Gang Foreman E. E. Valentine be now reimbursed for all days and hours involved from October 2, 1967 until Mr. Valentine is recalled to service due to the penalty not being justified.

FINDINGS:

This dispute centers on the fifteen day suspension administered to an extra gang foreman "for violation of Rule 1006, Rules and Instructions Governing the Use and Operation of Track Cars effective October 1, 1964, in connection with the collision of the Backhoe and the engine of Train No. 61 at Dykes, Ohio, August 25, 1967."

It is undisputed that the accident took place and it is uncontroverted that at the time in question, Claimant had directed the Backhoe operator to place his machine on the track and begin work. Claimant admitted at the hearing that he had engeged in the safety violation with which he was charged by failing to post a lookout.

We agree with Petitioner that technical objections, if valid, should be evenly enforced. However, its contention that Rule 1006 only applies to track cars and the transportation involved in the present dispute was by truck and not track car is unimpressive under the circumstances of this case, particularly in view of Claimant's own admissions. He was not unduly prejudiced by any of the matters to which Petitioner objects and the claim must be denied.

AWARD: Claim denied.

Adopted at Cleveland, Ohio, October 16, 1974.

/s/ H. M. Weston
H. M. Weston, Chairman

/s/ R. A. Carroll
R. A. Carroll, Carrier Member

/s/ A. J. Cunningham - Dissenting
A. J. Cunningham, Employee Member