

SPECIAL BOARD OF ADJUSTMENT NO. 956

**BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES)
and)
NEW JERSEY TRANSIT RAIL)
OPERATIONS, INC.)**

**AWARD NO. 154
CASE NO. 154**

STATEMENT OF CLAIM:

Claim on behalf of W. Keane, Class I Operator, for expungement of discipline assessed, payment for all time lost, and reimbursement for benefits lost during time withheld from service.

FINDINGS:

Special Board of Adjustment No. 956, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employes within the meaning of the Railway Labor Act; as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant has a seniority date of April 30, 1991. He operates the Self-Raising Tamper ME705. On May 15, 2007, he was notified by the Carrier to attend a hearing in connection with the following charges:

On May 7, 2007, at approximately 10:30 a.m. in Garfield, NJ, you had just finished fueling the Self-Raising Tamper No. ME 705. During that process you extended the work head out. After having completed the fueling, you failed to return the work head back to a locked position that was safe for track travel clearances. You reverse traveled in a west direction, hitting the electric switch lock at the Dundee Spur, resulting in material damage to the lock in the amount of \$7,644.

The hearing was held on August 29, 2007. Following the hearing, the Carrier determined that the Claimant was guilty of the charges and issued the Claimant a seven day actual suspension.

From a review of the record, it is evident that the facts adduced at the hearing support the Carrier's initial charge and the ultimate determination of Claimant's guilt. By far the most important was the Claimant's own admission of wrongdoing. The transcript of the hearing reads in pertinent part:

[Hearing Officer]: Do you want to explain, in your own words, why you think it occurred – I mean it's been established that you're a responsible, a well experienced Operator and this type of occurrence doesn't usually happen. What happened on that day that made it different?

Claimant: Well, as previously stated, we stopped for fuel at the same time I was servicing the machine, put the work head out, took on motor oil, walked around the machine, put it in the side compartment, climbed on that side of the machine, and in a rush to get out of the way for next equipment to take on fuel, backed up and clipped the casing. And the casing is the only thing that was broke.

[Hearing Officer]: So let's just get to why it happened. Was it an oversight on your part?

Claimant: Correct.

[Hearing Officer]: So you're basically admitting that you made a mistake, is that correct?

Claimant: Correct.

Based on the foregoing, we find that the record established that Claimant hurriedly backed up his machine in making way for other equipment. In so doing, Claimant violated the following rules:

Rule 383 (b): Maintain constant lookout for obstructions or other unsafe conditions in the direction in which moving, particularly when rounding corner, passing doorway, in a congested place, crossing an intersection.

Rule 522: Movable work parts of hoisting equipment or of other self-propelled or other equipment must be secured in "UP" or otherwise "CLEAR" position as soon as work is stopped and before traveling.

Concluding as we do that the charges have been proven, we next turn our attention to the reasonableness of the disciplinary penalty meted out. The Organization argues that the imposition of a seven day actual suspension was overly harsh and inconsistent with numerous other instances in which employees have been issued lesser discipline for similar offenses. However, evidence produced by the

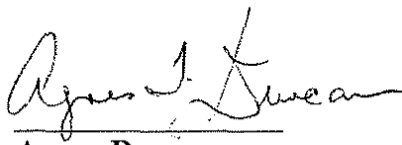
Organization in the form of waivers signed by other employees is not particularly relevant. Waivers in lieu of investigation are akin to settlements by the parties. There are many reasons for the Carrier to offer a waiver and for the Organization and the employee to accept one. The Board cannot delve into the circumstances which led to the signing of the waivers, and therefore they are of limited probative value.

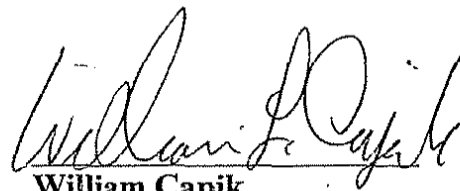
In the final analysis, the Board agrees with the Carrier that discipline is warranted where negligence of the kind seen in the instant case is proven. However, while we recognize the reasonable range of discretion given to the Carrier in imposing discipline, we also note that there are mitigating circumstances in this matter which should have been considered. Claimant is a long term employee with an unblemished record. We believe that a five day actual suspension should serve to impress upon the Claimant the nature of his offense and the need to improve his performance in the future. Accordingly, the seven day suspension is hereby reduced to a five day suspension. Claimant shall be paid for two days' lost pay and benefits.

AWARD

Claim sustained in part as set forth in the Findings.


ANN S. KENIS
Neutral Member


Agnes Duncan
Carrier Member


William Capik
Organization Member

Dated this 18th day of October 2008.