

SPECIAL BOARD OF ADJUSTMENT NO. 956

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES**

and

**NEW JERSEY TRANSIT RAIL
OPERATIONS, INC.**

)
)
)
)
)
)
)

**AWARD NO. 155
CASE NO. 155**

STATEMENT OF CLAIM:

Claim on behalf of R. Canales-Molina, Class II 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 June 8, 2004. The instant claim was precipitated as a result of the determination by the Carrier that Claimant was guilty of the following charges:

On October 30, 2007 at approximately 10:27 am, you were operating Knox Kershaw Ballast Regulator BR-303 from West End Interlocking in Jersey City to the Curtis Write Switch in Wood-Ridge NJ. You were following Self Raising Tamper machine ME-703 in a west direction through Laurel Interlocking. Approximately 200 feet west of the interlocking, Class I Operator Jason Cartwright stopped the ME-703 on an out-of-service track per the instructions of Track Foreman James Buccine at the direction of the Main Line Train Dispatcher. You were not wearing your seat belt as required; you failed to stop your equipment as required, causing you to collide into the ME-703 and causing personal injury to yourself, Foreman James Buccine and Operator Jason Cartwright, and caused approximately \$47,500 worth of combined damage to the track equipment.

The Board has carefully reviewed the transcript of the hearing held on November 19, 2007. It is readily apparent that there is substantial evidence in the record to support the charges directed against the Claimant. As the Carrier correctly contends, the Claimant was negligent while operating the Ballast

Regulator in that he failed to keep that equipment at a safe distance behind the Tamper and neglected to wear a seat belt.

Claimant stated that there were extenuating circumstances because he had not received prior information that the Tamper ahead of him would be stopped. However, the Claimant was governed by restricted speed when he came through an interlocking and proceeded on an out of service track. He was required in accordance with NORAC Rule 80 and Rule 813 to control his movement to permit stopping within one half the range of vision short of railroad equipment ahead of him. The record shows that the operating conditions on the date in question were optimal and Claimant would have been able to see ahead of him for nearly one thousand feet. Contrary to the Claimant's contentions, we find that there were no extenuating factors to mitigate Claimant's role in the collision. It was his responsibility to remain attentive and to travel at a safe distance to avoid colliding with another machine, notwithstanding the lack of prior notice that a stop would be necessary. He failed to do so.

This Board further rejects the Claimant's contention that the Ballast Regulator was not in good working order. Although Claimant stated that the gears "popped out" as he tried to brake to avoid a collision, the record shows that the tests performed immediately after the incident demonstrated that there were no mechanical deficiencies which would have affected the equipment so as to prevent its safe operation. Moreover, in the thirty day period prior to this accident, none of the Claimant's equipment reports identified any malfunctions associated with either the transmission or the braking.

Concluding as we do that the Claimant's misconduct has been proven, and that the collision was caused by operator error, we next turn our attention to the reasonableness of the discipline imposed. Following the hearing, the Claimant was issued a 45 day actual suspension. In addition, he was disqualified from all maintenance of way machines and equipment for a period of two years. The Organization asserts that, while the collision was unfortunate, the Claimant should not bear sole responsibility for the incident. The Organization argues that the foreman in charge of moving the machines was equally culpable and yet he was allowed to sign a waiver with discipline far less severe than that issued to the Claimant.

We have considered the Organization's arguments but find that they are without merit. The Claimant was primarily responsible for the collision and the discipline was commensurate with the seriousness of his misconduct. As a result of the Claimant's failure to maintain a safe stopping distance, three employees were injured and both vehicles were damaged. In addition, we note that this was the

Claimant's third accident within his relatively short tenure with the Carrier. Under the circumstances, the discipline imposed was not arbitrary, capricious or an unreasonable exercise of the Carrier's discretion. Based on all these factors, we must rule to deny the claim.

AWARD

Claim denied.


ANN S. KENIS
Neutral Member


Agnes Duncan
Carrier Member


William Capik
Organization Member

Dated this 18th day of April 2008.