

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician T. W. Jackson was unjustly treated when his discipline record was assessed thirty (30) demerits on May 31, 1985, following formal hearing investigation for alleged violation of portion of Rules M, 801, 4001, and 4082 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines). Said alleged violations occurring on February 17, 1985 and March 9, 1985.

2. That accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to:

- (a) Rescind the thirty (30) demerits assessed Electrician T. W. Jackson's discipline record."

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant was given a warning and 30 demerits for allegedly violating the following rules:

Rule M which states:

"Carelessness by employees will not be condoned, and they must exercise care to avoid injury to themselves or others. They must observe the condition of equipment and tools used in performing their duties, and when found defective, will if practical, put them in safe condition, reporting defects to the proper authority."

Rule 801 which states:

"Employees will not be retained in the service who are careless of the safety of themselves or others."

Rule 4001 which states:

"Any action which creates hazard, must be avoided."

Rules 4082 which states:

"Crane operators must not move loads unless they are sure that all persons are in the clear."

On February 17, 1985, the Claimant is alleged to have operated a 40 ton crane in a manner which endangered the safety of various Machinists personnel on the ground. On March 9, 1985, the Claimant was operating a 15 ton crane and, while operating that crane, ran the cables all the way down causing the cable to reverse itself on the spool thereby reversing the up and down buttons on the crane. The Claimant is said to have then run the cable all the way while pressing the down button causing a safety plate to be dislodged from the crane which fell to the floor and nearly missing another employee in the vicinity.

The Organization argued the Carrier acted in an arbitrary and capricious manner. The Carrier has not properly trained Employees and Supervisor. The Claimant was only following orders. The Organization noted that no Supervisors of the Carrier saw the events that were alleged to be unsafe. The actions of the Carrier are based on the testimony of individuals of the Machinist's craft who were out to get the Claimant. The Organization stated the shop was run in a lax manner, and it is unfair to blame the Claimant.

The Carrier argued the Claimant has been employed since 1974 and has been a crane operator for a number of years. The incidents which were alleged actually did occur, and the employees in the shop demanded action. The Carrier stated the discipline of 30 demerits was very lenient under the circumstances, particularly in light of the injuries that could have occurred due to the unsafe operation of the crane by the Claimant.

The transcript in this case is full of conflicting testimony, and much of the evidence is of a circumstantial nature. The Board feels that the Carrier has not adequately borne its burden with respect to all of the Rule violations cited by the Carrier. However, the Board feels that the Claimant should have been aware that the 15 ton crane was not operating properly on March 9, 1985, and when in fact the Claimant was operating the down button, the crane was going up. Rule M states that employees "...must observe the condition of equipment and tools used in performing their duties...." Therefore, the Board will order the Carrier to remove the 30 demerits from the Claimant's record and substitute a warning letter in its place. The Board specifically admonishes the Claimant to conduct himself in such a way that he is operating his equipment in a safe manner. The results of improper crane

movement can be debilitating injuries or even death to those who are on the ground, and the Board orders that the letter of warning be made a part of the Claimant's personal file.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Peyer - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1988.