

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 105, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Union Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement, the Union Pacific Railroad Company unjustly dismissed Groundman Leon O. Fish.
2. That accordingly, the Carrier be ordered to reinstate the aforementioned Claimant to service with seniority unimpaired and be compensated for all time lost, vacation rights, Health and Welfare, Insurance benefits, Pension benefits including Railroad Retirement and Unemployment Insurance.

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 employee 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.

Claimant was charged with operating an overhead crane in a careless manner, in violation of Safety Rule 700, in that he carelessly and without direction dropped a crane hook striking Mr. George A. Crnkovich, a Machinist Helper, on the head causing him personal injury. Following an investigation he was adjudged guilty of the above charge and dismissed from Carrier's service.

We find there was substantial evidence adduced at the hearing to substantiate Carrier's findings. Employees Dunn, Ryan and Crnkovich, all of whom were present when the mishap occurred, testified that no one had signaled claimant to lower the hook. Rather he lowered the hook without being directed to do so, and thereby struck Mr. Crnkovich on the head. Claimant, himself, admitted that he did not receive a signal to lower the hook.

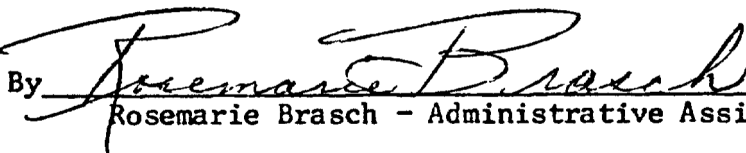
We believe the foregoing clearly establishes that claimant carelessly operated the overhead crane. This was no mere unavoidable accident which occurred beyond his control. It was a definite act of carelessness. Nor were there mitigating circumstances which would alleviate his responsibility. There were no mechanical defects in the crane, and claimant knew that Crnkovich was on the ground below him. Furthermore, there was testimony at the hearing that Claimant was not a safe crane operator and that Carrier had received complaints about him before. Based on the seriousness of the infraction as well as claimant's past carelessness which could result in death or serious injury to employees in the future we are convinced that the discipline of dismissal was not excessive.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of May, 1974.