

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14053  
Docket No. 13918  
13-2-NRAB-00002-100003**

**The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Railway Carmen Division of TCU/IAM**  
**(Springfield Terminal Railway Company**

**STATEMENT OF CLAIM:**

- "1. That the Pan Am Railway Company, specifically its operating subsidiary the Springfield Terminal Railway violated Rule 13.1 of the Current Agreement on May 28, 2009 when it assessed Claimant E. J. Olson a thirty (30) day suspension from service without the benefit of a fair and impartial hearing.**
- 2. That now, as just and proper relief, the Springfield Terminal Railway Company compensate the Claimant for all lost wages as a result of the suspension; make the Claimant whole for all out of pocket medical expenses incurred while suspended; expunge the Claimant's record of this matter in its entirety."**

**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 were given due notice of hearing thereon.**

On May 5, 2009, the Carrier directed the Claimant to report for a formal Investigation on May 13, 2009, concerning in pertinent part the following charge:

"This Notice of Hearing is issued to develop the facts and place your responsibility, if any, in connection with the incident(s) outlined below:

**Violation of Safety Rule PGR-C**

Safety Rule PGR-C reads in part as follows:

‘Any act of insubordination, hostility or willful disregard of the Company's interests will not be condoned and is sufficient cause for dismissal.

Specifically, on Friday, May 1, 2009 you repeatedly refused to operate the RC-150 at Ayer, MA to lift MEC 31857.’”

On May 28, 2009, the Claimant was notified that he had been found guilty as charged and was assessed a 30 calendar day suspension without pay.

It is the position of the Organization that the Carrier erred in suspending the Claimant. It argued that the transcript shows that on May 1, 2009, the Claimant advised his immediate Supervisor, Assistant Car Shop Manager Russell St. Hillaire, that he would not operate the RC-150 Crane because the cables were unsafe. It emphasized the Claimant refused to operate an unsafe piece of equipment, but never refused to perform any other work. It concluded that there was no violation of Safety Rule PGR-C and requested the discipline be set aside and the claim sustained as presented.

It is the Carrier's position that the record verifies that the Claimant received two instructional STOPS on April 30, 2009, for not answering his pager. (STOPS are part of the Carrier's safety training and observation program wherein supervisory employees observe employees either applying the Company/Safety Rules or breaking them and will issue them either compliance or instructional STOPS.) It argued that because the Claimant was issued the two instructional warnings on April 30 and was upset, he chose to assert that the crane was unsafe to

use on May 1 as a form of retaliation against his Supervisor. It closed by stating that the Claimant was insubordinate in not following the direct orders of Assistant Car Shop Manager St. Hillaire and asked that the discipline not be disturbed.

The facts of record indicate that when the Claimant was directed to operate the RC-150 Crane on May 1, 2009, he informed the Assistant Car Shop Manager that he would not do so because it was allegedly unsafe. The Claimant agreed to drive it to Ayer, Massachusetts, but he would not agree to operate it. After arriving in Ayer, he was again directed to prepare the crane for use, at which time he reiterated that the crane was not safe and he would not operate it. The Carrier surmised that he refused to operate it because he was upset over being issued two instructional warnings the prior day. The Organization countered that he simply chose not to operate an unsafe piece of equipment, which was within in his rights. The Carrier questioned the Claimant's alleged safety concern by noting that the crane had been operated by him on three recent occasions (March 27, March 30 and April 21, 2009) without complaint.

Assistant Car Shop Manager St. Hillaire surmised that the Claimant withheld information, as well as his opinion about the condition of the crane, until it was convenient for him to reveal it, so as not to have to operate the crane and in doing, so he violated Rule PGR-C, because he refused to operate the crane and did not properly inform the Carrier of any alleged damage to the crane.

The Assistant Car Shop Manager's speculative argument is not persuasive because it makes the assumption that the Claimant would knowingly operate an unsafe piece of machinery until it was convenient for him to impede the Carrier's work as a form of retaliation despite the potential danger to himself. The question at issue is whether the crane was unsafe to use on May 1, 2009.

Assistant Car Shop Manager St. Hillaire testified that the Claimant was an excellent employee, licensed and certified by the state of Massachusetts as a Crane Operator with a good work record.

During the course of the Hearing the Claimant questioned Assistant Car Shop Manager St. Hillaire as follows:

"E. Olson: That's the code of Massachusetts regulation book for your hoisting license and it's from the Department of Public Safety.

**R. St. Hillaire:** It's titled, its titled 520 CMR: Department of Public Safety regulating, regulation filing and publication. The operator shall be responsible for those operations under their direct control. When there is doubt as to safety of any action, the operator shall have the authority to stop and refuse to handle loads until safety has been assured. No person shall lose their position of employment as a result of complying with 520 CMR 6.00." (Emphasis added)

At a later point during the Hearing the Claimant continued questioning Assistant Car Shop Manager St. Hillaire as follows:

**"E. Olson:** On April 30th did I tell you that the crane cables were unsafe?

**R. St. Hillaire:** Yes.

**E. Olson:** Okay. On Friday morning May 1st did I once again tell you that the cables were unsafe?

**R. St. Hillaire:** Yes.

**E. Olson:** After that did you tell me to drive the crane out to Ayer?

**R. St. Hillaire:** Yes.

**E. Olson:** Knowing that the cables were unsafe?

**R. St. Hillaire:** Yes.

**E. Olson:** So you expected me to operate the crane knowing it was unsafe?

**R. St. Hillaire:** Yes.

E. Olson: You did. Okay. After I showed you the defect on the crane you got up you saw the defects. Did you not see the defects on the cables at Ayer MA?

R. St. Hillaire: I saw some damage to the boom cable yea.

E. Olson: Okay and are you qualified to say if a cable is good or if it's bad?

R. St. Hillaire: No.

E. Olson: Am I qualified to say if a cable is good or bad?

R. St. Hillaire: Yes.

E. Olson: Okay well I told you the cables were bad.

R. St. Hillaire: Correct.

E. Olson: Did anyone else come out and look at the cables?

R. St. Hillaire: No." (Emphasis added)

Based upon the foregoing testimony, it is clear that the Charging Officer subsequently became the Claimant's best witness when he testified that the Claimant was qualified to make the determination as to whether or not the crane was defective and he was not qualified. Additionally, he testified that the Claimant's determination was not contested by any other qualified expert. Lastly, he stated that in accordance with the Department of Public Safety the Operator had the right to refuse to work if there was any doubt as to the safety of the crane. The Board's careful review of the record substantiates that the Claimant was not insubordinate; nor was it shown that he did not operate the crane because he was allegedly upset over being issued two instructional warnings. The Board finds and holds that the Claimant correctly asserted his right to not operate the crane because it was potentially unsafe and hazardous to his welfare and others. Because the Carrier failed to meet its burden of proof, the claim is sustained in accordance with the terms set forth in Discipline Rule 13.7.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Second Division**

Dated at Chicago, Illinois, this 30th day of April 2013.