Award No. 1552
Docket No. 1464
2-B&O-CM-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Carmen Relief Wrecking Crane Operator A. F. Wilhelm was unjustly deprived of his seniority rights during the period November 23, 1950 to February 23, 1951, inclusive.

2. That accordingly the carrier be ordered to compensate the aforesaid carman for all time lost including overtime, during the aforementioned period.

EMPLOYES' STATEMENT OF FACTS: Carman A. F. Wilhelm, hereinafter referred to as the claimant, was regularly assigned as relief wrecking crane operator. On October 8, 1950, about 6:45 P. M., the claimant was called to accompany the wreck train to Galatea, Ohio, to assist wreck train from Garrett, Indiana, to clear up wreck that had occurred there and to re-rail locomotive and tank 5587.

On October 9, 1950, after re-railing tank of locomotive 5587 on eastward main track at Galatea, was taken into siding to clear tracks for trains that were to pass through the opposite tracks. The wreckmaster instructed the claimant to place the crane boom over the top of engine tank 5587, and while in the siding the claimant was instructed to eat his lunch, by the wreckmaster, in the dining car attached to and part of the wreck train. While the claimant was eating lunch someone of the operating officials of the carrier issued instructions to the conductor to move the wreck train to North Baltimore, Ohio, which is about four or five miles from the scene of the wreck. This movement was made without the knowledge of the wreckmaster or the claimant.

At about 11:30 A. M. on October 9, 1950, during the abovementioned move, the crane boom struck an overhead bridge. Under date of October 11th the following notice was directed to the Claimant:

> "You are hereby notified, in accordance with the rules of wage agreement under which you are working to report to my office at

Based on the petitioner's statement and the statement of his representative, had there been procedural defects in the investigation, and the carrier submits there were none, then the petitioner specifically waived any such procedural defects in the hearing.

THE DISCIPLINE ASSESSED WAS PROPER.

The petitioner's negligence in the handling of crane X-76 on October 9, 1950, was a proximate cause of the serious accident. The petitioner's guilt is established in his responsibility for the safe and efficient handling of his crane. The applicable instructions provide detailed procedural methods outlined for the safe handling of cranes while on line of road. The petitioner failed completely in that responsibility. He failed to make the proper arrangements to safeguard the move with the necessary outlined safeguards.

The factual record establishes that the petitioner was crane operator in charge of his crane and was governed by the applicable instructions pertaining to the positioning and securing of that crane. The record demonstrates that the petitioner was apprised that his crane was to be moved away from the scene of the wreck in a line of road movement, yet he failed to take any action whatever to protect and to safeguard its movement. His inaction amounted to a display of gross negligence. He has not been able to offer any satisfactory explanation for his negligent conduct at that time. The correct measure of discipline was assessed against him for his responsibility in this serious accident.

Based on the above, the carrier respectfully requests this Division to find this request as being without merit and to deny it accordingly.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

The carmen of System Federation No. 30 contend carrier unjustly suspended Relief Wreck Crane Operator A. F. Wilhelm from service during the period from November 23, 1950 to February 23, 1951, inclusive, and ask that he be compensated for all time lost during that period, including overtime.

By letter dated October 11, 1950 carrier notified Wilhelm there was to be an investigation on October 13, 1950 regarding the accident to Relief Crane X-76 at Galatea on October 9, 1950. Wilhelm was the operator in charge of the crane at the time of the accident. An investigation was held and on November 22, 1950 carrier notified Wilhelm it found he was negligent in the performance of his duties and informed him he was dismissed from its service as of November 23, 1950. As of March 1, 1951 carrier restored Wilhelm to its service.

We find carrier's contention that the dispute was not handled on the property within the time limits of the parties' controlling agreement to be without merit. Carrier rendered its decision on November 22, 1950 and the record shows that the first handling thereafter was on November 24, 1950, which was clearly within the time limits provided. In addition thereto it appears that in handling the claim on the property no objection was made that it was not being handled within time. It was there handled on its merits, with an attempt to settle. Consequently the right to raise this contention has passed. Provisions limiting the time in which claims can be made must be

raised at the first opportunity after a claim is presented to which it applies or it will be considered as having been waived.)

Carrier contends a settlement was made on the property whereby Wilhelm was restored to service on condition that no claim would be made for pay while he was out of its service. This is the proposition carrier made in conference on February 6, 1951 and which the committee then rejected as not acceptable. By letter dated February 20, 1951 carrier advised that instructions were being issued to reinstate Wilhelm to its service on a leniency basis but without pay for time lost. Without waiting to receive a reply, carrier, by letter dated February 26, 1951, notified Wilhelm to report as he had been restored to its service. It is apparent that this offer of the carrier was never accepted and, since carrier had been advised on February 6, 1951 that this offer was not acceptable, it proceeded to restore Wilhelm to service on its own responsibility. The record does not show any action on the part of the committee or Wilhelm that would now estop them from making this claim.

The record shows that there was a serious wreck at Galatea, Ohio, on October 8, 1950. Wilhelm was called about 6:40 P. M. on that date to help clear the wreckage. He was in charge of crane X-76 while doing so. On October 9, 1950, about 11:00 A. M., they had rerailed the tank car of Engine 5587 by placing it on carrier's main eastbound track. While this was being done three eastbound freight trains were held up. To permit these freight trains to pass relief wreck train, Engine No. 4541, of which crane X-76 was a part and which will hereafter be referred to as the relief train, moved onto the west end of the east passing side-track. At that time Wreckmaster Leis, who was in charge of clearing up the wreck, directed Wilhelm to put the boom of his crane just over the tank car of engine 5587. This Wilhelm did. It was the position of the boom as the relief train stood on the siding. There was a diner on the relief train. After the relief train stopped on the siding Wreckmaster Leis told Wilhelm to go eat. This Wilhelm did, as did also the conductor of the relief train and the wreckmaster. While these men were eating the relief train started to move. Conductor Schlotterback, assigned to this relief train, thereupon hurried out of the diner to determine why his train was moving. He was informed by Trainmaster Carlson that the train was being moved west on the main line to North Baltimore in order to place the crane at the west end of the wreck. Carlson told the conductor the relief train was ready to go.

Under carrier's operating rules Wilhelm, as the crane operator, had a duty, when his crane became part of a train which was to move on line of road, to place the boom in a trailing position on the block car and secure it, if necessary, to insure safe travel.

The operating rules made it the conductor's duty to see that the boom of the crane was properly placed and secured for travel when his relief train was placed in an on line road movement.

If the Wreckmaster had known that the relief train was going to go to North Baltimore, Ohio, his duties would have been the same in that regard.

After the relief train started to move Wilhelm left the diner and went to the block car, which was a part of his crane equipment. As the relief train moved west the front end was composed of the following units: First, the tank car of engine 5587, then the crane, then the block car and then engine 4541. As has already been stated, the boom of the crane was then extended over this tank car and not over the block car, as the instructions of the carrier required it should have been. The relief train stopped just after passing the tower. At that time both the conductor and Wilhelm were on the block car. The crane was directly in front of them and the position of the boom clearly visible. Wilhelm then knew the train was going to North Baltimore, some two miles distance, on the main track. No change was made in the position of the boom. There is a viaduct over the carrier's track between the eastbound passing siding at Galatea and North Baltimore. As the relief

train approached the viaduct the boom failed to clear and an accident resulted causing serious damage to the crane, the viaduct, and injury to several employes, one seriously. This is the accident which was investigated.

The question arises, what were Wilhelm's duties when informed by the conductor that the relief train was being taken to North Baltimore, some two miles west on the main track?

During the trip the relief train would be under the supervision of the conductor and subject to his direction. Ordinarily Wilhelm, who was in immediate charge of the crane, should have governed himself by the operating instructions relating to cranes and the position of their booms while in trains on main line movements. This would be particularly true if he had not known that the conductor was fully aware of the situation. But here the conductor and crane operator were together. Both were equally aware of the position of the boom. Under these conditions the conductor ordered the train to proceed. Should Wilhelm have countermanded such orders, stopped the train and changed the boom? We do not think he should have. With the conductor having full knowledge of the facts and being in charge of the train we do not think it was obligatory, on the part of this employe, to do so. The conductor's immmediate supervision and orders, with full knowledge of the facts, were paramount and superior to Wilhelm's knowledge of the general operating instructions and his duties thereunder. Considering all of the facts we find that Wilhelm was not negligent in the performance of his duties when he failed to stop the relief train and change the position of the boom. Of course, if at any time during the trip it became apparent to Wilhelm that it was actually dangerous to leave the boom where it was, he would then be obligated to immediately take action. But such does not appear to have been the situation here.

Carrier objects to the form of the claim. The parties' agreement provides, in case it is found an employe has been unjustly suspended, he

> ". . . shall be . . . compensated for his net wage loss, if any, resulting from said suspension . . .".

This applies to wage loss, if any, with the carrier. We find the claim, as made, in proper form.

In view of what we have said we find the claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1952.