Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8954
SECOND DIVISION Docket No. 9129
2-EJ&E-CM-'82

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employes:

1. That as a result of an investigation held on June 10, 1980, Carman P. J. Gomez was suspended from the service of the Elgin, Joliet and Eastern Railway Company for a thirty (30) day period from Monday, June 23 to Tuesday, July 22, 1980, inclusive, and was also disqualified as a Holmes Mobile Crane and Derrick Engineer Operator. Said suspension and disqualification of Carman Gomez is unjust, unfair, unreasonable, extremely excessive and in violation of Rule 100 of the current working Agreement.

2. That, the Elgin, Joliet and Eastern Railway Company be ordered to compensate Carman P. J. Gomez for all time lost as a result of the thirty (30) day suspension, and further be ordered to reinstate Carman P. J. Gomez as a Holmes Mobile Crane and Derrick Engineer Operator.

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.

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

Claimant, P. J. Gomez had been a bid Holmes Mobile Crane and Derrick Engineer Operator for the Elgin, Joliet and Eastern Railway Company for approximately 3-4 years prior to the incident which led to his thirty (30) day suspension, and his disqualification as an Operator, by this Carrier. The incident in question took place on June 4, 1980. On that day, at approximately 1:35 P.M. the Claimant was instructed by his supervisor, Mr. M. Kranz, to finish the work he was then doing with crane No. 225 in order to have it on track No. 18 facing east by 2:30 P.M. so that the crane could be moved from Joliet, Illinois to Gary, Indiana. In the process of doing this Claimant damaged the boom of the crane at approximately 1:50 P.M.

After a hearing on this incident was held on June 10, 1980 Mr. Gomez received the discipline noted above. He did so because the crane was damaged.

The crane was damaged because accepted safety procedures of the Carrier were not followed. This was admitted by both Carrier and Organization. The sole issue of substance to be resolved in this case, therefore, is whether Mr. Gomez was unilaterally liable for breaking the Carrier's Safety Rule No. 145 which, in turn, created the condition for the crane's damage, or whether the Carrier is also liable for some of the blame.

Safety Rule No. 145 states:

> "Operator must test operation of limit switch by raising hoist until switch operates and must test brakes at beginning of each turn. If found to be inoperative, it must not be used. Report the condition to the Foreman immediately."

In fact, however, the limit switch of crane No. 225 was not working on the day of the accident, nor had it been working, by admission of both parties, for some time prior to this. Nor is it sufficient for Carrier to contend that Safety Rule No. 145 really means that the safety switch itself should not be used if found inoperative. This effectively would put the operator in the position of having to substitute personal judgment for a manufacturer's specified safety switch on a piece of equipment. On the other hand, it was the obligation of the Claimant not to have operated equipment which, by experience, he must have known to be potentially liable to damage without an operable limit switch.

The thirty (30) day suspension received by Mr. Gomez from June 23 to July 22, 1980 inclusive was, in fact, a suspension of 22 work days. Given the circumstances of this case, the Board finds this suspension excessive and directs the Carrier to make Mr. Gomez whole for five (5) of the twenty-two (22) work days he was suspended i.e., full pay less any amount earned in other employement and/or received by means of statutory unemployment benefits. The Board also orders the requalification of Mr. Gomez. Mr. Gomez gives indication that he can operate equipment competently and safely when the Carrier provides such, but in the circumstances covering this case it did not do so.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of March, 1982