

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it disciplined Work Equipment Operator John Lynch without proper and sufficient cause; on the basis of unsupported, unproven, and improper charges; and failed to render a decision within twenty days after date hearing was held;

(2) The Carrier now be required to allow Work Equipment Operator John Lynch payment for the working hours actually lost and to clear his record of the unfavorable entry made thereon all in conformance with Rule 24 of the effective Agreement.

OPINION OF BOARD: Briefly stated the undisputed facts of this case are as follows. Crane W-3320 was in Concord Shop for general repairs, including the installation of a new boom steel cable with six Crosby clips as cable fastening devices. This crane came out of the shop on January 29, 1954 and was assigned to Equipment Operator John J. Lynch. On one occasion, a few days after he started operating the crane, Claimant Lynch tightened the nuts on the newly installed "U" bolts or clamps by a three-quarter turn. And again, about February 10 or 11, he says that he took another one and one-quarter turn on the nuts. Between 1:30 P. M. and 2:00 P. M. on February 19, while Claimant was handling a crossing frog with this crane, the cable pulled through the Crosby clips causing the boom of the crane to drop. The crane was again returned to the shop.

On February 25, the Local Division Officer suspended Claimant from service for his "failure to keep cable clips properly tightened on Crane W-3320 which permitted cable to pull through the clips and the boom to drop on February 19, 1954."

Claimant requested a hearing which was granted and held in the office of the Division Engineer on March 5, 1954. At the conclusion of this hearing, Claimant acknowledged that it had been conducted in a fair and impartial manner. On March 25, he was instructed to return to work on Monday, March 29. At the same time Claimant's representatives were sent copies

of Division Engineer Benson's instructions to Claimant's Supervisor, J. J. Healy, to assess discipline "to the extent of 30 days suspension and 48 marks."

It must be noted that Claimant has a good record, with no previous incidents of carelessness or other failure to observe regulations. And the present dispute is over the question as to whether Claimant was primarily responsible for the accident of February 19, 1954.

Since "safety is of the first importance in the discharge of duty", we hesitate to substitute our judgment for that of Management in matters of this kind unless there is clear evidence of arbitrary, capricious or grossly unfair and unwarranted treatment. While there is much controversy in this record, it does not show that the discipline was without cause. Nor does it show that the officers in charge acted capriciously. The following exchange from the record indicates Claimant's answers to certain questions from the Division Engineer:

Q. On Feb. 19, you were in charge of Crane W-3320 when the boom dropped?

A. Yes, sir.

Q. Will you tell us briefly just what happened?

(Here Mr. True objected on the ground that Rule 99 states that the Work Equipment Foreman is in charge of the operation of the crane).

Q. I will change the question, then. On Feb. 19, you were operating Crane W-3320 when boom dropped?

A. Yes, sir.

Q. You stated to me that the cause of the boom dropping was that the cable pulled through the Crosby clips?

A. Yes, sir.

Q. You stated that since January 29, when you took over this crane, you tightened these clips twice, the last time was on Feb. 10 or 11 at which time you stated you took up $1\frac{1}{4}$ turns on the nuts on the clips—is that right?

A. Yes, sir.

Q. You stated Mr. Lynch that after February 10 or 11, you did not check the nuts again previous to dropping of the boom which was Feb. 19, except to look at them?

A. Yes, sir.

Q. You also stated to me that if the clips had been tightened the cable could not have pulled through the clips?

A. Yes.

At another point in the record, Claimant admitted that he had a responsibility to see that the clips were tight. In view of the evidence before us, we see no basis upon which to sustain this claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement has not been violated.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: A. Ivan Tummon
Executive Secretary**

Dated at Chicago, Illinois, this 15th day of February, 1957.