

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21285
Docket Number MW-21303

Dana E. Eischen, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Norfolk and **Western Railway Company**

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

(1) The suspension of fifteen (15) days imposed upon **Machine Operator R. L. Procise** was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File **MW-CR-74-102**).

(2) The charges placed against Machine Operator R. L. **Procise** be stricken from his record and he be compensated for all wage loss suffered, all in compliance with Rule **32(c)**.

OPINION OF BOARD: This is a discipline case involving 15 days actual suspension assessed against Machine Operator R. L. **Procise** on charges of negligent operation of a Truck Crane resulting in damage to a Tie Crane on April 25, 1974 at Suffolk, Virginia. On the date in question, Claimant was operating the Tie Crane as part of a **crew renewing** bridge ties under the supervision of Mr. A. C. Walker, Jr., **Supervisor**, B&B. After completing the work, Walker instructed **Procise** and his Helper, K.C. Jones, Jr. to load the Tie Crane onto a flat car using a Bantam Shield Truck Crane. Claimant inquired of Walker if there was available a double-line snatch block to make the lift but was told none was **available** at the site. Jones attached the cable of the Truck Crane to a **4-way chain** using an undersized clevis which was too **small** to fit over the ring of the chain. The **attachment therefore was jerry-rigged** by Jones putting the cable directly through the **4-way** chain ring and bolting the clevis around the loop in the cable. This arrangement was observed directly by Supervisor Walker **who did not** object to the method of rigging. Jones thereupon attached the chain to the **Tie Crane**, gave **Procise** in the Truck Crane the signal to lift and he did **so** lifting the Tie Crane about two feet, but then lowering **it** again to adjust the brakes on the Truck Crane. Upon lifting the Tie Crane the second time, the cable parted and dropped the Tie Crane to the ground thereby damaging it. Walker, Jones and **Procise** determined that cable strain due to the method of rigging was **the cause** of the accident. Another clevis of the proper size was then found, the **4-way** chain was rigged properly through that clevis and the lift was made to the flat car without further incident.

Thereafter, by letter dated May 10, 1974, Claimant was suspended for 15 days without pay by **Division Engineer E. H. Wilkinson**. Under Rule 32 of the Agreement, the Organization requested an investigation. Following

adjournment the hearing was held on June 6, 1974 with Division Engineer Wilkinson serving as Hearing Officer. On June 18, 1974 the Hearing Officer issued his decision as follows:

"Reference previous correspondence, and attaching copy of investigation held June 6, 1974, concerning the above subject;

Facts developed in the investigation indicate that Machine Operator R. L. **Procise** knew correct **procedure** for handling loads of the kind in question but still violated correct procedure; **resulting** in extensive damage to Tie Crane NW 10050. I can see no reason to change or **modify** discipline **as** has been assessed."

By letter dated June 26, 1974 the instant claim was filed and, failing resolution on the property has been appealed to this Division.

The position of the *Organization* herein is twofold to wit: 1) That Claimant was deprived of fair and impartial handling of **this matter because** Division Engineer Wilkinson preferred the charges, held the hearing **and** rendered the decision and 2) Claimant was not guilty of negligence because his Supervisor was present throughout the operation, observed the manner of rigging and lifting, and interposed no objection to the procedure used. Carrier rejects both these positions on grounds, respectively, that the **Agreement** expressly states nothing about conduct of the hearing and that the **negligence of** the Supervisor, if any, is irrelevant to the fact of Claimant's culpability.

We have reviewed the hearing record carefully and can find no overt evidence of prejudgment or prejudicial conduct by the hearing officer. In **these circumstances** and in the absence of agreement **language** on the subject, we **cannot** find that mere multiplicity of roles, without more, is a per se deprivation of a fair and impartial investigation. g i s not a general endorsement of such hearing practices, but the Organization has not carried its burden of proving that the Agreement was violated thereby in this case.

Turning to the **claim** of insufficient justification for the **15-day** suspension, we are persuaded that the **Organization's position** has **merit**. The Carrier plainly placed the entire responsibility for the accident upon Claimant's shoulders and either disregarded or discounted the **role** of the Supervisor in the accident. Claimant, as operator of the machine, is not without fault and bears partial responsibility for the accident. He is not relieved of all responsibility because of the negligence **of** others. Accordingly some

discipline **was** warranted. But a basic tenet of **arbitral** review in such cases is that discipline be uniformly and reasonably applied in all of the **circumstances**. There is **no** evidence to suggest that Carrier considered the mitigating circumstance of Walker's direct **order** to load the Tie Crane without a snatch block and the Supervisor's **participation** in and implicit approval **and** authorization of the method **of** rigging used by Claimant's helper. In fact, Carrier refused to consider such evidence at all. We must conclude that a **15-day** suspension on these facts is arbitrarily **and** unreasonably harsh. Thus, we shall reduce the discipline imposed to a suspension of five (5) days without pay. Accordingly, the claim is sustained to the extent that Carrier shall amend Claimant's record to show a five-day suspension and shall compensate him for ten days **wage** loss suffered, less outside earnings if any.

FINDINGS: The Third Division of the Adjustment Board, upon the **whole** record and all the evidence, finds and holds:

That the parties waived **oral** hearing;

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 **was** violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 12th day **of** November 1976.