

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23912
Docket Number MW-23845

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Peoria and **Pekin Union** Railway Company)

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

(1) The three day suspension imposed upon Machine Operator **Gregor** Herberger 'for his responsibility **in** connection with an injury sustained by **Foreman** David **Vlasis**' was without **just** and sufficient cause and on the basis of unproven charges (system File **PPU-352/S-TC 25-80**).

(2) Machine Operator **Gregor** Herberger shall be afforded the remedy prescribed in Rule **17(c)**."

OPINION OF BOARD: Claimant received a three-day suspension for his responsibility **in** connection with the injury sustained by his **foreman** while he was **moving** a rail with a Burro Crane. The rail struck the foreman. The issue is whether the Claimant was negligent in so doing. The transcript establishes that the Claimant did not **look** in the direction of the **foreman** **immediately** prior to **moving** the **crane**. The **testimony** goes into other facts in connection therewith but for our purposes nothing therein overshadows the clear basis for the discipline imposed by the Carrier.

In **view** of the nature of the accident, namely, one involving safety procedures, a subject to be emphasized at all times by all parties, and in view of the clear responsibility on the part of the Claimant and others similarly situated to insure that no one is **in** the path before making such a **movement**, a procedure designed to protect all persons in the area including the Claimant, we find that the Carrier has satisfied its burden of making its decision based upon adequate evidence.

A three-day suspension is clearly not excessive.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of June 1982.

