

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Duluth, Missabe and Iron Range Railway Company

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

(1) The disciplinary demotion of Crane Operator J. E. Scott and his permanent disqualification as crane operator was arbitrary, capricious, excessive and in violation of the Agreement.

(2) Mr. J. E. Scott's seniority as crane operator be restored and unimpaired and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third 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 employes 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.

Prior to the incident involved in this matter, Claimant held seniority as a Crane Operator for approximately seven years. As a result of charges dated October 23, 1985; hearing ultimately held on November 13, 1985, and by letter dated December 2, 1985, Claimant was no longer permitted to operate Class A, B or C machinery and his On-Track Equipment Operator's permit was revoked because of Claimant's alleged failure in his duties as a Crane Operator by allowing his crane to strike overhead electrical wires on October 17, 1985.

Claimant's testimony sums up what transpired in this matter. On October 17, 1985, while operating a crane:

"I looked out of the crane and sun was bright, like it has been for the last couple weeks, and I thought I could go up under the wires without hitting them. And as I, I took the crane to go backwards, my alarm system went off, I proceeded to hit the brakes, and it was too late. I hit the top of the wires."

Further, according to a written statement prepared by Claimant, "... I stop the crane to check if the boom would make it under the line and it look like it could...." Claimant additionally testified "I admit I hit the wires, just misjudged that's all."

Claimant's prior disciplinary record shows a dismissal reduced to reinstatement on a leniency basis; a five-day suspension; removal of Class A, B and C machine rights which were subsequently reinstated; a 60 day suspension later reduced to 29 days and marks on his record on three other occasions.

Rule 26 states, in pertinent part:

"The operator is responsible to see that a careful lookout is maintained to avoid contact with overhead wires or other overhead obstruction."

It is well established that our review of the record is limited to a determination of whether substantial evidence exists to support the Carrier's determination that Claimant committed the alleged infraction. If substantial evidence is found, we may only set aside the amount of discipline if it can be determined that the discipline was in the category of being excessive, arbitrary, capricious or an abuse of discretion. Third Division Awards 26276, 26274, 26180, 17040, Second Division Award 8527.

We find substantial evidence supports the Carrier's conclusion that Claimant violated Rule 26 when he struck the overhead electrical wires with his crane. Claimant admittedly did not keep a careful enough lookout to avoid the overhead wires. He knew the location of the wires and yet he struck those wires with his crane. The fact that damage may not have been significant or that no injuries occurred is irrelevant. The Rule requires a "careful lookout" - a function that Claimant did not perform. We further conclude that the amount of discipline imposed was neither excessive, arbitrary, capricious or an abuse of discretion to warrant setting aside that discipline. Claimant's prior disciplinary record justifies the degree of discipline imposed.

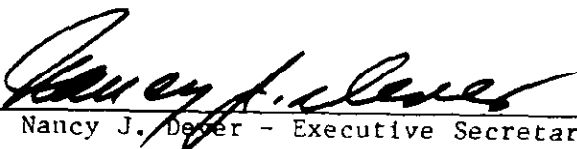
A W A R D

Claim denied.

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Award No. 27075  
Docket No. MW-26910  
88-3-86-3-193

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.