

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(Louisiana & Arkansas Railway Company

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

(1) The thirty (30) day suspension of B&B Foreman H. H. Hoose for alleged responsibility '... in connection with the incident that occurred on May 27, 1988 ... when the crane mounted on Bridge Truck 2470 was heavily damaged.' was without just and sufficient cause, arbitrary, on the basis of unproven charges and in violation of the Agreement (Carrier's File 013.31-393).

(2) As a consequence of the violation referred to in Part (1) hereof, the Claimant's record shall be cleared of the charge leveled against him, he shall be reimbursed for all wage loss suffered as a result of the improper suspension, including overtime and holidays and he shall be reimbursed for travel time and expenses incurred while reporting for the Carrier's investigation on August 15, 1988."

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.

The Claimant was notified of an investigation concerning his responsibility in connection with damage to a crane mounted upon a Bridge Truck. Subsequent to the investigation, the Claimant was assessed a thirty day suspension.

On the day in question, the crane boom was lowered into its cradle, and while enroute to the tool car, the crane boom raised (although disengaged) and struck an overpass.

The Claimant objects to reference to the "Safe Vehicle Transportation" Rule which requires that the loading hook be "secured" since the Carrier has never defined the means to secure.

The Organization argues (and cites Awards in support of its contentions) that an employee can not be held responsible for rules that are not transmitted and that there must be a showing of a probable cause, or reasonable nexus between the employee's action and the damage. Stated differently, you shouldn't punish a person for a mechanical failure over which he had no control.

We will concede that the conduct of the hearing was not ideal, and that one of Carrier's witnesses did appear to be somewhat contradictory. However, we feel that the transcript as a whole, including the Claimant's own testimony, presented sufficient information to form the basis for the thirty day suspension.

Giving the Claimant the benefit of his testimony that the equipment has been a problem from its inception, and that Management was aware of the mechanical failures, the need for an even greater degree of caution is suggested. The Claimant conceded that he was not supposed to move the vehicle unless the boom is in its cradle and the loadline is snug. But on the day in question the loadline was not hooked into the ring.

To be sure, as noted by the Organization, the act of "securing" might not have prevented the incident, and if faced with damages after the employee took all reasonable precautions, our result might well be different. But here, the Claimant was not comfortable with the performance of the equipment, and we feel that more was demanded of him as a reasonable precaution.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 28th day of October 1991.