

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company (former St. Louis-
(San Francisco Railway Company)

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

(1) The disciplinary disqualification of Locomotive Crane Operator D. O. Ferguson for alleged violation of Rules 319 and 321 in connection with overturning Locomotive crane BC-7 at Arcadia, Kansas on September 22, 1987 was on the basis of unproven charges. (System File B-2060/EMWC 88-2-19 SLF).

(2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be reinstated as a crane operator, he shall be paid for all wage loss suffered and his record shall be cleared of the charges leveled against him."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

On September 22, 1987, Claimant was working as the operator of Bridge Crane No. 7 in connection with replacing the spans of bridge 114.6 at Arcadia, Kansas. Also at the site was Bridge Crane No. 5 with its operator. Additionally, B&B Gang 826 with a Foreman was working at the site. After obtaining track and time, the crew set about the task of removing the old bridge decking in preparation for setting new concrete spans. The Foreman, Claimant and the other crane operator conferred. Claimant and the other operator agreed that Claimant's crane was capable of lifting and removing the decking, and they so informed the Foreman. The crane was setting on over four inches of track elevation. The crane's line was attached to one end of the decking after which Claimant lifted and flipped it as planned. However, the decking did not clear the parapet pilings of the bridge which necessitated a second lift. When Claimant lifted the decking a second time it dislodged from the

parapet pilings, swung out and away from the crane and tipped the crane over. Claimant sustained a personal injury and there was approximately \$50,000 damage to the crane.

By letter of September 25, 1987, the Carrier notified both Claimant and the Foreman to appear for formal Investigation to determine the facts and responsibility in connection with Crane No. 7 overturning on September 22 in possible violation of several cited rules. The Investigation was held on October 6, 1987. The Foreman was exonerated of responsibility. However, by letter of October 16, 1987, the Carrier notified Claimant that inasmuch as the Investigation developed that he was not aware how close to the load limit his crane was while handling the bridge deck he had violated Rule 319 requiring an operator to know the load his machine is capable of handling and Rule 321 requiring that outward drift of the load be considered when handling loads near the maximum crane capacity. The letter also stated that Claimant was disqualified as a Bridge Crane operator, that his name would be removed from the bridge crane operator's seniority roster and that he could place himself on any position his other seniority, unaffected by the Carrier's action, would allow.

The Carrier argues that the record in this case fully supports the discipline. The Carrier emphasizes that while the rules and practices pertaining to crane operation require the operator to know the lifting capacity of his crane and to operate it within such restrictions Claimant did not know and made no attempt to actually learn of the weight of the old bridge decking. The Carrier points out that Claimant estimated that weight to be approximately 20,000 pounds when in actuality it was 25,000 pounds. The Carrier also points out that it view of the boom radius of the crane and the elevation in the track the maximum weight which the crane could lift was 19,000 pounds. Accordingly, Claimant negligently failed to ascertain the lifting capacity of his crane.

The Organization maintains that the Carrier has failed to sustain its burden of proof in this case inasmuch as the record establishes that the crane overturned due to factors other than those cited by the Carrier. The Organization emphasizes that the track elevation caused the crane to tilt toward the direction in which it eventually fell. In this connection the Organization argues that, contrary to the Carrier's position, Claimant cannot be faulted for failing to deploy the outriggers of the crane because it was established practice not to do so when it was necessary for the crane to make several moves, as it was in this case, and because the crew had just installed ballast making the area where the outriggers would be placed too soft for effective support. The Organization also alleges that Claimant was not made aware of the fact that the load had become wedged or stuck on the parapet pilings of the bridge after the first lift and toss and that, accordingly, when the load was freed on the second lift it shifted unexpectedly. Finally, the Organization contends that Claimant had no formal training with respect to the operation of a crane and had to learn what to do essentially by word of mouth. Thus, argues the Organization, Claimant should not be held responsible for the crane overturning.

Our review of the record in this case leads us to conclude that it fully supports Claimant's responsibility for the accident.

Rule 319 requires a crane operator to use care to avoid overloading the crane and in that connection to be familiar with the load capacity or limits of the crane at various radii. Clearly, the Rule contemplates that the crane operator will know or ascertain with some degree of accuracy the weight of the load to be lifted. A Supervisor of Work Equipment, General Bridge Supervisor and Bridge Engineer each testified that it is the responsibility of the crane operator to know the weight of the load he is lifting. The Supervisor of Work Equipment also testified that it was standard procedure for crane operators to ask or inquire about the weight of loads they may be required to handle. Additionally, the Bridge Engineer testified that several times crane operators had made inquiry of him as to the weights of bridge components.

In this case Claimant made no inquiry of any responsible Carrier official as to the weight of the old decking he was going to remove from the bridge. Rather, he relied upon his own experience in estimating the weight to be 20,000 pounds. Moreover, Claimant apparently relied heavily upon the opinion of the other crane operator that Claimant's crane could handle the load. Claimant underestimated the weight of the load by 5,000 pounds. The capacity of Claimant's crane to make the particular lift at issue in this case, which the record demonstrates also was Claimant's responsibility to know, was 19,000 pounds. Accordingly, the crane would have been overloaded even if Claimant's estimate of the weight of the decking had been correct. Claimant knew or should have known that he was operating the crane near its maximum capacity and, as charged by Rule 321, should have considered the possibility of the load swinging out particularly in view of the fact that the elevation of the track caused the crane to tilt or lean.

While we agree with the Organization that in view of the established practice on the property and the facts of this particular case Claimant cannot be faulted for his failure to use the outriggers on the crane, we cannot accept the fact that the elevated track caused the crane to tip over. Claimant knew of the elevation. When Claimant learned that the other crane at the site had experienced no problem the previous day when driving piles while on the elevation, Claimant concluded that his crane which was larger than the other crane could lift the load from the elevation with no problem. Undoubtedly the elevation contributed to the crane turning over. However, it was Claimant's responsibility to ascertain the lifting capacity of his crane on the elevated track. His misestimate as to the weight of the load to be lifted contributed significantly to his failure in such responsibility.

The same is true of the fact that Claimant may not have realized that the bridge decking had become wedged or stuck on the bridge parapets. Claimant knew he was operating the crane at or near capacity and Rule 319 requires that in such a circumstance the crane operator must anticipate that the load may swing out. However, Claimant's misestimate of the weight of the load prevented him from correctly anticipating the consequences of the load swinging out, i.e., the crane turning over.

While it may be true that Claimant never received formal training in crane operation, it must be borne in mind that Claimant had operated a crane for approximately three years prior to the incident in this case during which time Claimant learned the duties and responsibilities of the position. Claimant indicated his knowledge and understanding as to the rules and load limits applicable to the particular lift at issue in this case. Claimant knew and understood that he was responsible for ascertaining the weight of the bridge decking to be lifted. Claimant chose to rely upon his judgment in estimating the weight of the load rather than taking steps to more accurately ascertain its weight. Claimant's error in judgment cannot be attributed to the lack of proper training.

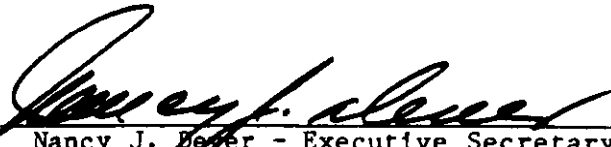
In the final analysis we must conclude that the record establishes Claimant's guilt as charged. The record establishes no basis upon which to set aside or modify the discipline in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1992.