

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31913
Docket No. MW-32289
97-3-95-3-116**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE:
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) day suspension and disqualification as crane operator] imposed upon Crane Operator R. O. Nelson for alleged violation of Safety Rules 3300, 3314, 3000 and NORAC Operating Rule 997 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System Docket MW-3152D).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall receive the benefit of the remedy stipulated in Section 4 of Rule 27."**

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 employee 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 were given due notice of appearance at hearing thereon.

On October 15, 1993, while the Claimant was operating Locomotive Crane CR 94100 driving piles, the crane derailed and tumbled down an embankment.

A hearing was held and the Carrier found the Claimant guilty of violating Conrail Safety Rules 3300, 3314, 3000 and NORAC Operating Rule 997. The Claimant was assessed a 30-day suspension and disqualified as a crane operator.

The Organization filed the instant claim on behalf of the Claimant arguing that the CR94100 crane that the Claimant was operating received extensive modification in 1987 by the Carrier. These modifications were not approved by the manufacturer or the seller. The Organization points out that the crane had previously derailed after the modifications were rendered. Furthermore, the Organization contends that the Claimant has been employed by the Carrier for 17 ½ years without any incidents and he has operated the CR 94100 crane for four years without incident.

The parties being unable to resolve the issue at hand, this matter now comes before this Board.

This Board has reviewed the procedural arguments raised by the Organization and we find them to be without merit.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence to support the finding that the Claimant was guilty of violating various Carrier Safety Rules when operating the crane on October 15, 1993. The testimony makes it clear that the Claimant violated several rules in the operation of the crane, and he also failed to use common sense when he faced the situation of the boom swinging causing the load to sway. Given the extensive experience of the Claimant, it is clear that he should have operated the crane in a much safer manner and avoided the accident that occurred on the date in question.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

In this case, the Claimant was issued a 30 day suspension and he was disqualified from the crane operator position. Given the seriousness of the rule violations here, as well as the extensive damage that was caused by the Claimant's actions, this Board cannot find that the disciplinary action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 4th day of March 1997.