

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32787
Docket No. MW-32919
98-3-96-3-286

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees**
(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline assessed (disqualified from operating all types of cranes) Crane Operator M. A. Scates for alleged responsibility in connection with Burro Crane 4164 derailling at Mile Post C 230.7 on May 1, 1995 was without just and sufficient cause and based on an unproven charge [System File 7(9)(95)/12(95-0624) LNR).**
- (2) As a consequence of the aforesaid violation, Crane Operator M. A. Scates' record shall be cleared of the charge leveled against him 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 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 hearing thereon.

In disciplinary matters of this kind, where a mishap is involved, it is axiomatic that the Carrier bears the burden of proving, by means of probative evidence, the fault of the employee charged. This requires not only proof of improper action by the employee, but also the causal connection between the improper action and the mishap. The mere fact of an accident, standing by itself, is not proof of wrongdoing by an employee.

The record in this matter does not satisfy the Carrier's burden of proof. Neither of its two witnesses actually saw the derailment - only its aftermath. At worst, the record shows that Claimant did not have a load rating chart for the crane. Because the cribber to be lifted was of unknown weight (its weight was not stenciled on it), the record provides no explanation how the presence of such a chart would have made any difference. According to the testimony of one of the witnesses it was proper for Claimant to test lift an item of unknown weight to obtain a feel for how the crane would handle it. It was also proper to use rail dogs to hook onto the cribber.

After careful review of the entire record, we find that neither the transcript of the Investigation nor Carrier's later correspondence on the property provides a persuasive explanation of the cause of the derailment that shows Claimant to have been responsible. Under these circumstances, finding Claimant to be culpable requires us to indulge in an impermissible degree of speculation.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 23rd day of September 1998.