

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company
(Former Missouri Pacific Railroad Company)

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

(1) The Carrier violated the Agreement when, without the benefit of an investigation as contemplated by Rule 12, Section 1, it assessed the arbitrary and harsh discipline of fifteen (15) days deferred suspension and permanent disqualification as a crane operator to Machine Operator C. E. Miner effective March 11, 1987 (Carrier's File 870506).

(2) Mr. C. E. Miner's record shall be cleared of the charges and his seniority rights as a crane operator shall be restored unimpaired."

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 basic facts are undisputed. On March 6, 1987, at approximately 2:00 P.M. while employed as a Machine Operator, the Claimant operated a Burro Crane on the Chester Subdivision near Gorham, Illinois. While traveling with a load suspended from the boom, he allowed the boom to drop and the Burro Crane he was operating thereafter ran over the lead causing damage to the Burro Crane. Following an initial inquiry into the incident, the Claimant was presented with a written "waiver" which he signed. In this document he elected to waive his Agreement rights to a formal Investigation under Rule 12, Section 1 of the Schedule Agreement and accept discipline for his responsibility in the above described incident. He also elected to accept a fifteen day deferred suspension and disqualification on all Burro Cranes or any type of crane machine as long as he is employed as a Machine Operator.

The issue presented by this case is whether the Claimant singularly and without participation of the Organization can waive his right to an Investigation under Rule 12. It is the opinion of the Board that as a simple matter of policy, the Organization's arguments are very persuasive. However, there are two factors that compel the denial of the claim. First, there is an un rebutted assertion made by the Carrier of an overwhelming practice of employees accepting waivers. Second, this same issue was resolved by Public Law Board No. 279, Award 30 on the property between these same parties.

In view of the foregoing, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.