

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30050  
Docket No. MW-30622  
94-3-92-3-371

The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(SPCSL Corporation (former Chicago, Missouri &  
(Western Railway Company)

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

- (1) The five (5) day suspension of Machine Operator R. J. Riederer for the alleged violation of Rules 10(B) and 607(2) in connection with Burro Crane #00400301 being struck by an unknown object was arbitrary, capricious and in violation of the Agreement (Carrier's File 502-5-A CMW).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be '...compensated for each day of his five (5) day suspension, restored all benefits accrued under the Agreement, reinstated former seniority rights and his record cleared of all charges.'"

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 employe 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.

Claimant was a maintenance of way employee at East St. Louis, Illinois. On June 12, 1991, Claimant was instructed to attend an Investigation on July 1, 1991, for the following:

"...to develop the facts and place responsibility, if any, in connection with your alleged failure to see that the track where burro crane #00400301 was tied up, was properly protected from rail or other traffic be reflectorized red flag (CS1371), Maintenance of Way lock or switch spiked and dispatcher promptly notified where required, that resulted in burro crane #00400301 being struck in the boom section and moved backward by an unknown object, which you reported to K. W. Watson on June 3, 1991, at approximately 3:10 P.M., in the vicinity of East St. Louis, Illinois."

As a result of the investigation, Claimant was suspended for five days.

The Claimant was working as a track laborer on May 27, 1991 when he was told by his foreman to help move a burro crane to the Gateway Western Railroad. When the Claimant and another foreman arrived at the Gateway Western, the foreman instructed Claimant to unload tie plates using the burro crane. After completing the work, the Claimant left the burro crane where he had performed the work, then returned to his work as a laborer. On June 3, 1991, it was discovered that the Burro Crane had been damaged, apparently after being struck by a Gateway Western locomotive.

It is incumbent upon the Carrier to hold a fair and impartial hearing to develop all the facts of the incident under investigation. The burro crane was left on a foreign carrier, Gateway Western, yet no employees of that carrier testified even though alleged statements were introduced as coming from its train crew. The Gateway Western Trainmaster was not at the investigation even though there was testimony that he would not let the SPCSL spike the track where the burro crane was left. Neither the foreman who accompanied Claimant, nor the Claimant's regular foreman were made part of the investigation.

The record as it stands is unclear as to Claimant's guilt. The Carrier's failure to develop all the facts through a fair and impartial hearing leaves the Board no choice but to overturn the discipline.

#### A W A R D

Claim sustained.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.