

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30179  
Docket No. MW-29506  
94-3-90-3-441

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Colorado & Wyoming Railway Company

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

- (1) The discipline of Machine Operator T. Trujillo for alleged '... violation of Operating Rule J and Operating Rule L, Safety Rules 3, 4, and 11 which, together, contributed to injury to fellow employee, Mr. Andrew Gonzales, on May 22, 1989,' was without just and sufficient cause, arbitrary and on basis of unproven charges (System File C&W-89-02).
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimant's record shall be cleared of the charges leveled against him, he shall be compensated for all wage loss suffered and he shall be afforded the benefits prescribed in the Agreement."

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 waived right of appearance at hearing thereon.

Following an investigative hearing, the Claimant was assessed a letter of reprimand in connection with his operation of a crane. He was also required to undergo retraining. In the course of preparing the crane for storage following its assigned use, the Claimant's operation of the crane permitted it to move forward, injuring a fellow employee who was standing in front of the crane.

In its submission, the Organization appropriately summarizes the situation as follows:

"The central question to be answered is whether the proximate cause for the accident was the actions of the Claimant or the fact that the crane in question had been malfunctioning, with the Carrier's knowledge and acquiescence, for some time prior to the date that this dispute arose."

The record indicates that the crane was not functioning in a fully proper manner. Given this circumstance, it is also apparent that the Claimant failed to take precautions as to applying safeguards against the accidental movement of the crane. The resulting injury to an employee cannot be overlooked. The reprimand notice was clearly not punitive in nature, and the Board does not find it inappropriate.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 26th day of April 1994.