

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1088

Heard at Montreal, Tuesday, May 10, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN RAIL DIVISION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Discipline assessed Machine Operator W. C. Bailey effective 23 April 1982.

JOINT STATEMENT OF ISSUE:

Following an investigation of an accident on 23 February 1982 involving a Hepburn overhead crane, Machine Operator Bailey was restricted from the Operation of all types of cranes from Group II and beyond at the Belleville Engineering Yard.

The Union contends that Machine Operator Bailey was unjustly disciplined as a result of the accident.

The Company has denied the Brotherhood request.

FOR THE BROTHERHOOD:

(SGD.) PAUL A. LEGROS
System Federation General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations.

There appeared on behalf of the Company:

K. J. Knox	- Manager Labour Relations, CNR, Montreal
P. E. Scheerle	- System Labour Relations Officer, CNR, Montreal
A. L. Marshall	- Manager Engineering Yard, CNR, Belleville
J. T. Whelan	- Maintenance Foreman Engineering Yard, CNR, Belleville

And on behalf of the Brotherhood:

Paul A. Legros	- System Federation General Chairman, BMWE, Ottawa
W. Montgomery	- General Chairman, BMWE, Belleville
F. L. Stoppler	- Vice-President, BMWE, Ottawa
W. C. Bailey	- Grievor, BMWE, Belleville

AWARD OF THE ARBITRATOR

From the material before me, it is clear that the grievor did not carry out his duties as Crane Operator properly on the day in question, in that he did not properly inspect the equipment, and in that he attempted much too heavy a lift. In this particular case the cable snapped when the load was only six inches up, but the risk to life and property is obvious.

While I consider that the grievor did not carry out his work properly, and while some discipline would be proper, I do not consider that what occurred was proof of incompetence, nor that a heavy penalty was merited. It does not appear that the grievor completely neglected to inspect the crane cables. He was a relief operator, and gave the equipment "a visual glance", although did not inspect "in great detail". It does not appear that more than a visual inspection is required of Operators. It should, however, be an informed inspection. While the grievor was generally qualified to operate the equipment, it does not appear that he was instructed as to the inspection of the cable, that is, how to perform such an inspection, and what to look for.

As to the overloading, the grievor could not see the rails being picked up by the magnet of the crane. He ought, however, to have been aware of the method to be used when taking lifts from a "turned in" stockpile, that is, to take less than a full width magnet load. The employee on the ground (or in the car), however, might have communicated to the grievor that an excess load was being picked up. In this respect, as with respect to the inspection of the cable (if indeed it was worn, and did not simply snap on account of the excess load), the grievor should not bear the full responsibility for what occurred.

While the grievor was, in my view, subject to some discipline, there was not, in the circumstances, just cause for the penalty imposed. There was occasion to ensure that the grievor was properly instructed, and perhaps more closely supervised for a time, but the permanent restriction from crane operation was not justified.

Having regard to all of the circumstances, it is my award that the restriction imposed upon the grievor be lifted forthwith, and that he be able to work in accordance with his seniority and qualifications. I make no award of compensation, nor do I substitute any other disciplinary measure, since the grievor has already been penalized.

J. F. W. WEATHERILL,
ARBITRATOR.