

PUBLIC LAW BOARD NO. 1522

PARTIES) THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
TO )  
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. That the Carrier's decision to disqualify Los Angeles Division Pile Driver Operator D. M. Renno from his position was unjust.
2. That the Carrier now lift the disqualification from Claimant Renno's record as a result of investigation held January 13, 1984 because the Carrier did not introduce substantial, creditable evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, disqualification as Pile Driver Operator is extreme and harsh discipline under the circumstances.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in the Division Engineer's Office, San Bernardino, California concerning his alleged failure to operate Pile Driver 199454 in a safe and proper manner on November 15, 15, 16, 17, 28, 29, December 7 and 8, 1983 at MP 247 on the Fourth District, Los Angeles Division in possible violation of Rules 1 and 16 of Form 2626 Std. and Rules 1, 2, 3, 4, 215 and 224 of Form 2629 Std. and Rules A, C, K, and 1056 of the Rules of Maintenance of Way and Structures. Pursuant to the investigation the claimant was disqualified as a Pile Driver Operator. The Union filed a claim in the claimant's behalf.

The transcript contains 53 pages of testimony. The Board has considered all of the evidence. D. M. Gooney, the Assistant General Foreman, San Bernardino testified that while they were unloading T-rails the claimant was dropping the T-rails anywhere from 8 to 10 feet in the air over people and just letting them go. He testified that this happened several times at both bridges while they were unloading. The T-rails were 14 to 28 feet long.

Mr. Gooney further testified that he asked the claimant what the problem was, and the response was that "there wasn't enough weight in the T-rails." He testified he couldn't understand why some were being dropped and some were not.

J. D. Haiston, the B & B Foreman, testified that the claimant was having trouble with the machine and that he sat the T-rails down pretty fast. He stated that none of the members of his gang complained, and he did not believe that the claimant was unsafe.

David Tallyer, B & B Carpenter, testified that he was on the bridge setting rails, setting decks, taking bolts off and on when "someone hollered out to look out and before I could move the rail was bouncing on the top of the rail that was already set, and I had no where to go as I was on the end of the scaffold. . . ." The evidence indicates that the claimant was operating the Pile Driver at the time. Mr. Tallyer testified that he was lucky he was not killed. R. H. Connolly, a B & B Mechanic, testified that he was on duty at the same time and that it was a "close call."

J. Villalpando, Jr. testified that he was a B & B Mechanic and was passing signals to the claimant on the night in question and the rail tongs that were attached to the Pile Driver came loose from the rail that the claimant was handling. He testified that he used both audio and visual signals to the claimant. He further testified as to the events leading up to the dropping of a rail.

D. E. Lozano, General Foreman of Bridge and Building, testified that he was present on the night in question. He testified that he had received some reports earlier in the week and in previous weeks that the Pile Driver Operator had dropped some loads nearly causing some injuries. He testified that he was present the night of December 7 and early morning of December 8 to observe the progress of the job and to observe the safe operation of the Pile Driver. He stated that he observed the dropping of rails while he was present.

Mr. Lozano then testified that he observed one object lifted to a height which was not safe and nearly injured a man underneath the bridge. He testified that at approximately 1:30 a.m. a T-rail plate was being lowered by the Pile Driver which was suddenly dropped. He further testified that at 2:30 a.m. they were attempting to place a 28 foot T-rail under the bridge deck, and the Pile Driver Operator was given a signal to raise the load, and he raised it approximately 2 feet, whereas they needed a 2 inch raise. He testified this resulted in the entire bridge deck being lifted up approximately one foot, and the east end of the T-rail was forced downward by the lever action and came very close to striking two employees on a scaffold underneath the bridge.

Mr. Lozano further testified that approximately 3:30 a.m. a 28 foot piece of rail was being lowered into place directly over cap 5, and as it was being lowered it suddenly dropped from his chest height down to the cap. He then testified that on the way down it nearly struck 4 employees, hit a set of rail tongs on a crane that was attached to a crane truck and rail that was adjacent to where the rail was being lowered. He testified that when it struck the cap the rail rocked in

a see-saw fashion 3 to 4 times before coming to rest. He testified that at that time he determined no one was injured, and he walked over to the Pile Driver.

Mr. Lozano also testified that Mr. Connolly stated "That's it, I quit." He further testified that he told the claimant "You came very close to killing somebody, you have to be extra careful." He testified that at approximately 7:00 a.m. on the morning of December 8 he talked to the claimant and informed him that he was disqualified pending a formal investigation.

R. H. James testified that he was a B & B Mechanic on the night in question and he saw the rail fall and thought it hit Dave Tellyer and that he thought it bounced and hit him again.

The claimant testified that he requested a 25 ton hook which takes a three part line that is threaded on the hammer line on Pile Driver 199454. He further testified that it was common practice of all the operators he had observed in the last eight years with this machine anytime they rig the Pile Driver crane as a crane, they put at least a 3 part hook on it. He testified that he was using a hammer line with a single hook on it. He then testified that on the days that are set forth in the notice he was aware of loads being dropped. He testified that there were several loads which were brought down fast but only was aware of two that were dropped.

The Board has carefully reviewed all of the testimony including three witnesses whose testimony was not relevant to the case in question. After carefully studying all of the testimony the Board is unable to find that the decision of the Carrier is unjustified. Without question the operation of a Pile Driver is one that requires utmost safety. The Carrier is obligated to see that its employees have every protection which can be afforded them. Under the circumstances herein there is no justification for setting the decision of the Carrier aside.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member