

PUBLIC LAW BOARD NO. 1760

Award No. 135

Docket No. 135

Carrier File MW-DECR-91-02-LM-03

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railroad Company
(former Wabash)

Statement

of Claim: Claim on behalf of R. V. Parker for pay for time lost, reinstatement of operator rights, and the difference in pay for all time worked at a lower rate as a result of his dismissal as a Group #1 Prior Right Machine Operator and 30 day suspension resulting from the locomotive crane he was operating striking an overhead highway bridge on January 8, 1991.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board for that purpose.

Crane Operator, R. V. Parker, on January 8, 1991, was operating a Carrier-owned locomotive crane over the rail from the east end of the South Liberty siding toward Hardin, a distance of approximately 33 miles. On this route, the crane was required to pass under an overhead state highway bridge at Milepost 325.43 near Henrietta, MO. As the crane passed under the bridge at approximately 1:30 PM, the boom of the crane hit the structure, bending several components therein. The Claimant instructed another employee to contact the State Highway Department and advise them of the incident. He continued to move the crane onto Hardin where about 3:00 PM, he contacted a Carrier officer and reported the incident.

An investigation was held in connection therewith and as a result thereof, Carrier concluded the Claimant to be guilty of the charge placed against him. He was demoted or dismissed as a Group #1 prior right Machine Operator and was suspended from service for 30 days.

Claimant has been employed with Carrier for 26 years. He has been a Crane Operator for 9 years.

The Carrier concluded that the Claimant had violated Rule 1559 which requires that:

"Operators and/or pilots or boom-type cranes must be sure that in the boom where there are overhead bridges or other obstructions before attempting to pass beneath obstructions."

Also Rule N which, in part, reads:

"Every accident resulting in... damage to property must be reported to the proper authority by the quickest communication available, and a written report on the prescribed form must be submitted promptly."

The Claimant was accorded the due process to which entitled under Rule 30.


There was sufficient evidence adduced including Claimant's statements and admissions against interest, to support Carrier's conclusion of culpability as to the violation of the rules cited above. Claimant's statement at T-3, and confirmed at T-18, in part reads:

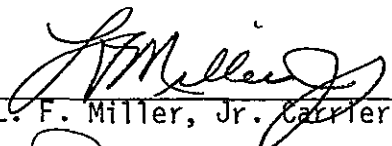
"Operator R. V. Parker stated reason for contact with crane and overhead bridge was account of incorrect estimation of the height of the boom and the height of the bridge structure."

The Claimant has been employed for 26 years. He has been a crane Operator for 9 years. The length of time that the Claimant has been disqualified undoubtedly has, by now, served its purpose. The Board herewith restores his Crane Operator's seniority. The claim is otherwise denied.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


S. A. Hammons Jr., Employee Member


L. F. Miller, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued January 21, 1993.