

PUBLIC LAW BOARD NO. 1760

Award No. 67

Case No. 67

File MW-DEC-84-65 (Tooley)

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement

of Claim: Appeal from discipline of thirty days actual suspension assessed Crane Operator S. W. Tooley by letter dated December 28, 1984.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, following a formal investigation held December 12, 1984, was advised, by the Assistant Division Engineer on December 28, 1984 that:

"...you failed to properly connect up train air and charge train brake system as required by Norfolk and Western Railway Company Safety Rule 1560, which resulted in crane not being able to stop short of derail, striking same and going over same..."

He was assessed thirty (30) days actual suspension as discipline therefor.

Claimant, on October 22, 1984, was the Crane Operator working with the B&B Gang assisting in replacing ties on the bridge span crossing the Missouri River at St. Charles, Missouri. He was instructed to move his crane from the staging area of Bridgeton, Missouri to the Hill track at St. Charles, a distance of approximately 1 mile. Upon arrival at the Hill track, Claimant was instructed to couple his Crane onto 2 gondola cars loaded with railroad ties and bring them back to Bridgeton. Claimant's Crane, NW 11412, was a 10 wheel truck mounted Crane, capable of both

highway and rail operations (Little Giant Hy-Rail Crane). Said truck is equipped with 2 sets of steel quick wheels (hy-rail wheels) on the front and on the rear to assist in the operation of the truck crane on the rails.

The Employees assert that it has only 2 wheel brakes when operated on the rails, i.e., the rear set of double ties and only one of which is on the rail.

Claimant opened and closed the main line switch and derail, then coupled onto said 2 cars, pumped up the air, checked the air valves and hoses, tried the brakes and was notified by the B&B Supervisor by radio to come down to the Hill track switch and he would meet Claimant there and open the switch for him. Claimant asserted that the Supervisor said he would have the "switch open for him." Claimant commenced pulling the cars westward, with the cars trailing the crane, down a 1% grade to return to the hill line, and where he saw that the derail switch was not thrown he put the brakes into an emergency. Thereafter, the crane and the west trucks of the 1st gondola car derailed at the safety derail which protected the switch leading to the main line.

The record reflects, despite assertion of the Claimant to the contrary, that the angle cock (valve) on the first car next to the Crane closed on the west end of the train line was not open. Thus, the air brake system on the 2 cars were not properly charged. N&W Safety Rule 1560 states:

"When any car or cars are coupled to
a crane equipped to furnish trainline
air, the trainline and all air reservoirs
must be charged whenever it is possible
for the car or cars to move under their own
momentum."

The Carrier's witnesses testified that the Little Giant Crane had the capability of charging the trainline air brakes, that there were no defects in either the Crane or the car braking system, that there was no air in the first car from the Crane, and that its expert witnesses, particularly the Engineer of Roadway Equipment, stated that if you cut in your trainline and everything is properly hooked up that one could stop the Crane despite the existing conditions on that date, i.e., a wet rail, 2 loaded gondolas and a downhill 1% grade.

The Board, finds that there was sufficient evidence to support the Carrier's conclusion as to Claimant's culpability. Carrier chose to believe the testimony of its witnesses and the record does not show an abuse of that discretionary right.

The Board concludes that the discipline assessed in light of the circumstances was not unreasonable. This claim will be denied.

Award: Claim denied.

M. A. Christie
M. A. Christie, Employee Member

S. C. Lyons
S. C. Lyons, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member

Issued August 18, 1986.