

PUBLIC LAW BOARD NO. 1838

Award No. 61

Case No. 62

Carrier File MW-NA-80-23

MW-NA-80-23(1)

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement Claim is made to restore claimants' D. A. Aistrop and C. B. Johnson, Jr. to service of Norfolk and Western Railway Company with vacation, seniority and all other rights unimpaired, and paid for all time lost. Citing Rules' 33 and 35 in support of this claim.

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 March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimants D. A. Aistrop and C. B. Johnson, Jr. were initially employed on October 28, 1978, and October 24, 1978, respectively. On the evening of September 2, 1980, Claimant Johnson was the assigned operator of clamshell NW-514880 and Claimant Aistrop was the assigned assistant operator of the machine. At approximately 6:00 PM on said date, at Blake, West Virginia, at MP 355.5, the clamshell was left unattended and ran way; the crane ran about eleven (11) miles down the mountain before coming to a stop. The crane suffered extensive damage as a result of the runaway. Subsequently, Claimants were dismissed, and, pursuant to the investigation rule, their representatives requested

an investigation, which was held on November 3, 1980, and, as a result thereof, under date of November 18, 1980 Claimants dismissals were upheld.

It appears from the transcript of the investigation that Claimants were engaged in the operation of the clamshell in conjunction with the rest of the rail gang. At some point during the operations of the gang, Aistrop, the operator, and Johnson, the assistant, parked the crane. Aistrop testified that he "shot the brakes" and waited approximately 10 or 15 minutes before getting off the crane to assist the other gang members in other work related activities. Johnson testified that he was picking up tools around the crane and that he went forward to help some of the other gang members restart a piece of equipment that had stalled. While Aistrop and Johnson were so engaged, the air apparently leaked off the crane. Both men testified that they chocked the front four wheels of the crane. Both men acknowledge that neither of them had set a hand brake on the crane prior to leaving it unattended. After the air had leaked off the crane started to move and ran away. Johnson, together with another employee, jumped in a truck and gave chase but were unable to catch it.

The transcript also discloses that both men had little experience in the handling and/or operation of the crane. It would appear that neither men had any independent instruction in the operation of the brake system. Both men labored under the impression that the only time they were to set a hand brake on the crane was when they were tying up at the job site for night or a weekend. An investigation of the crane itself discloses that there were no apparent defects in the system,

however, the independent brake was not designed to act as a parking brake.


The Board has read the transcript and finds that there exists ample evidence to support the conclusions that Claimants failed to carry out the necessary precautions to adequately secure the crane prior to leaving it unattended.

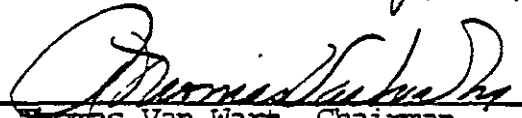
However, both Claimants had limited instruction and experience in their assignments. When juxtaposed to the severity of the discipline, coupled with the reputation that both men had on the job for being conscientious and attentive workers, the Board finds that the discipline has amply served its purpose. Therefore, the Board will order Claimants restored to service, without pay, subject to a return to service physical examination.

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.


A. D. Arnett, Employee Member


E. N. Jacobs, Jr., Carrier Member


A. Thomas Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, May 3, 1982.