

PUBLIC LAW BOARD NO. 2439

Award No. 60
Case No. 60

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western Lines)

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the Agreement when in letter dated June 11, 1982, the Carrier advised shovel helper R. O. Alvarez to the effect that evidence adduced at a formal hearing held on May 26, 1982, established his responsibility in connection with his carelessness April 12, 1982, near M.P. 458.71, which constituted a violation of Carrier's Rules M, M-243 and 801 and, for reasons thereof, he was thereby suspended from the service of the Carrier for a period of sixty (60) calendar days commencing June 16, 1982 through August 14, 1982, inclusive, said action being excessive, unduly harsh and in abuse of discretion.
2. That Mr. R. O. Alvarez now be compensated for all time lost from his assigned position as a result of the improper sixty (60) calendar days' suspension assessed him by the Carrier from June 16, 1982 through August 14, 1982, inclusive.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein was a shovel helper and had been in that position for approximately eight years at the time of the incident in question. On April 22, 1982, he was driving a truck-mounted crane to a work site where rail was to be picked up. He was driving along a roadway next to the right of way. The truck-mounted crane was some 35 to 40 feet overall in length and weighed almost 50,000 pounds. Claimant was driving down the roadway, staying as far away as possible from the right of way, apparently concerned with respect to possible trains coming by. As he proceeded down the road on the side at about 20 miles per hour, the crane slipped and he decided to drive over the embankment to descend to a lower road

some 4 feet and 10 inches below the road on which he was driving. The crane, however, as it got into the soft dirt of the embankment rolled over onto its side, injuring Claimant (a fractured elbow and a strained neck) and caused some damage to the equipment. Subsequently, following this occurrence, a formal hearing was held and Claimant was found to be guilty of carelessness and assessed a sixty calendar suspension.

Carrier insists that there is no question that Claimant was solely responsible for the accident which occurred. It is noted that there is no substantial dispute as to the basic facts of the occurrence. In this instance, the accident did happen and he was injured. In addition, the Claimant was responsible for the accident and either was guilty of poor judgment or intentionally drove along an embankment which was sheer carelessness in terms of handling the vehicle in question. The Carrier notes further that Claimant had a history of carelessness with Carrier having been disciplined for such an infraction in the past. Under the circumstances, Claimant was considered again to have been careless in operating the unit and, since the discipline assessed was progressive in nature, the sixty day (or 43 working days) disciplinary assessment was appropriate.

Petitioner notes that Claimant was under considerable strain in the course of the accident involved herein for reasons which were beyond his control. First, it was apparent that Claimant was concerned that there be sufficient clearance for the crane in the event that a train should attempt passage on the main line adjacent to him. In addition, Claimant testified that there was a defective exhaust system (caused by a problem on the previous day) with significant fumes in the cab of the truck because of that. Additionally, the heat in the cab was sufficient to melt the handle on his lunch pail and his vision was affected by that, as well as the sunlight striking directly on the windshield. The Petitioner notes that Claimant decided to steer the machine somewhat to the right for the reasons indicated heretofore and thereafter, when the roadway began collapsing under the weight of the crane, he attempted to bring the crane under control on the lower roadway but failed. The Petitioner notes that the particular piece of equipment is ungainly and difficult to drive and there is significant question as to whether or not the crane would have remained upright had Claimant merely stopped or attempted to stop prior to the rollover occurring. Thus, his decision was a reasonable one and unfortunately it was not a successful one. Under the circumstances, he exercised good judgment, based on substantial experience, and the discipline by which Carrier

rewarded him was excessive and harsh, according to the organization.

There is no question, based on the evidence in the record, but that Claimant was responsible for the accident which occurred, resulting in injuries to himself, among other things. He was well experienced and should have known about the problems of driving the particular piece of equipment. Therefore, there can be no doubt but that he must bear the responsibility for the incident and the accident. There were, however, some mitigating circumstances. The heat and condition of the equipment and particular circumstances of the strange road must be considered as part of the contributing element in the accident. There is no question but that, at minimum, Claimant exercised bad judgment under all the circumstances. At most, he was outright careless in his driving that day. It is the Board's view that the Claimant must be found responsible for the incident since there was clearly some carelessness involved in the final events which transpired. However, under the circumstances and in view of the environmental problems involved, the Board considers the sixty-day penalty to be excessive. Therefore, the suspension will be reduced to a thirty (30) calendar day suspension and Claimant will be made whole for losses in excess of that amount.

AWARD

The penalty assessed in this instance was excessive and will be reduced to a thirty (30) day suspension; Claimant will be made whole for all loss of wages beyond the thirty calendar days' suspension.

ORDER

Carrier will comply with the award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral-Chairman


L. C. Scherling, Carrier Member
C. F. Foose, Employee Member

San Francisco, CA

October 12, 1983