

PUBLIC LAW BOARD NO. 2960

AWARD NO. 10
CASE NO. 7

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The ten (10) day suspension and loss of machine operator's seniority imposed upon M. W. Haugen was without just and sufficient cause, and excessive. (Carrier's File D-11-19-71)
2. Machine Operator M. W. Haugen shall be compensated for the period held out of service and shall have his machine operator's seniority restored."

OPINION OF THE BOARD:

On May 23, 1979, the Carrier directed the Claimant to attend an investigation on the following charge:

"To determine your responsibility in connection with accident which occurred near M. P. 75.3 on May 18, 1979 when machine operated by you struck bridge brace, causing damage to machine."

It is undisputed that on May 18, 1979, the Claimant was operating a track maintenance machine on the Carrier's tracks when it struck a bridge through which it was passing. The accident caused approximately \$16,000 worth of damage and the machine was dibilitated for approximately six weeks.

The critical issue is whether the Claimant was negligent in the accident. It is reasonable to conclude based on the evidence that the Claimant was in fact negligent in the accident. The record

reflects that the Claimant operated the same machine through the same bridge earlier that day and had gotten out of the cab and made a careful inspection of the clearances involved and made appropriate and necessary mechanical adjustments to the machine in order for it to pass unencumbered. The Claimant testified that on this trip he made it through " . . . just barely . . ." However, the record doesn't reflect that the same precautions were taken on the return trip. The Claimant testified

" . . . as I came upon this bridge I slowed way down and in a standing position you have to stand up to see your jack shoes. I looked from one side to see if I would miss the bridge and missed the first brace and I looked to the other side that one missed it, I went to look at the other side to see if the next one was going .. if it was going to miss the next one and then the jack shoe caught and at that time it threw me back in the seat and I hit the throttle for the track travel and then it struck the bridge three more times . . ."

This testimony establishes that not as much care was taken on the second time through. It seems reasonable to expect the Claimant to have taken the same precautions on the second trip especially when he had only "barely" made it through the first time. It also seems reasonable to conclude that had the Claimant exercised the same diligence the second time as the first time, the accident would have been prevented. In this regard, his negligence is clear.

The Organization suggests that the Claimant wasn't negligent because cylinders operating the movable portions of the machine were not operating properly. It was established that the control for the cylinders was malfunctioning but it is also clear the cylinders were operable from the exterior of the cab. The Organization also

directs attention to Award 46 of Public Law Board 1844. However, in that case the operator was found not guilty due to circumstances beyond his control. There is no such showing in this case.

Regarding the quantum of discipline, we do not find it unreasonable related to the seriousness of the offense. In this regard, we do note that the Claimant was allowed to re-establish a Machine Operator seniority date approximately one year after the accident.

AWARD

Claim denied.



Gil Vernon, Chairman



J. D. Crawford, Carrier Member



H. G. Harper, Employee Member

Date: Feb 5, 1982