PUBLIC LAW BOARD NO. 2960

AWARD NO. 102
CASE NO. 137

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The thirty (30) day suspension assessed Machine Operator R. R. Scarberry for alleged responsibility in connection with damage to Burro Crane No. 17-3301 was without just and sufficient cause and on the basis of an unproven charge. (Organization File 2D-4484; Carrier File 81-84-171-D).

(2) Machine Operator R. R. Scarberry shall be allowed the remedy prescribed in Rule 19(d).

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employe and Carrier involved in this dispute are respectively Employe and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On February 28, 1984, the Carrier directed the Claimant to attend an investigation on the following charge:

"Your responsibility in connection with damage to Burro Crane #17-3301, which occurred on February 24, 1984 at approximately Mile Post 27.0 on the Trenton Sub-Division."

The investigation was postponed once. Subsequent to the investigation, the Carrier assessed the discipline on appeal before the Board.

The basic facts are not in dispute. On February 23, 1984, while the Claimant was operating a Burro Crane from Williamson to Clariton, Iowa, the magnet -- hooked to the boom of the crane -- fell between the rail. As the Claimant's machine moved over the magnet, the transmission case and brake rigging suffered extensive damage.

The work rule which applies to this case is Rule 1011, which reads:

> "Employee in charge of work equipment will be personally responsible for the safe operation of the equipment."

The Carrier argues that based on the rule, there is substantial evidence of the Claimant's guilt. They contend that it is irrelevant that the hook, which held the magnet, did not have a safety latch. They note that the Claimant testified that although he was aware that there was no safety latch on the hook, he had not reported this fact to anyone, nor had he taken any measures to secure the hook.

The Organization makes two arguments. First, they contend that the manner in which the Claimant operated the Burro Crane on February 24, 1984, was acquiesced in by the Roadmaster. Second, they assert that since the Roadmaster was well aware of the type of hook being used, and allowed the crane to be so operated, the Carrier's decision to discipline the Claimant for alleged damage to a machine represents an abuse of discretion.

Based on the evidence contained in the transcript, the Board cannot hold the Claimant responsible for the accident.

At the base of this finding, is the fact that there is general agreement in the record that had the crane been equipped with the type of hook that had a safety latch, the accident would not have occurred. The Carrier believes this is not material since the Claimant had not taken measures to secure the hook, or bring the matter to anyone's attention.

However, in the context of this record, these arguments are not cogent. First, the Board is satisfied that the Carrier was fully aware that the crane was being operated without a safety-latch hook and failed to take exception to its operation in this mode.

This fact is established by the sheer length of time that the crane was operated without a safety-latch hook. It is also established by the fact that two months prior to the incident, the Claimant was instructed to give a smaller and better hook, which was on his machine, to another crane operator. It is also relevant that at this time, the other crane operator asked the Carrier to purchase a new hook, and the request was denied. It is also important, to note, that although the Carrier was aware that unsecured hooks were in operation, they issued no specific instruction that operators should take certain precautions. The Carrier did argue that he should have known to wrap wire around the hook. However, there is no basis in the record to show that this would have prevented the accident, or even that he should

have known to do this. The investigation is void of any evidence on "wrapping wire" around the hook. Thus, this is complete speculation on the Carrier's part.

Accordingly, it is apparent that the Claimant, insofar as the hook goes, was operating the crane in a manner consistent with that which the Carrier had accepted as customary and usual. Thus, it is unreasonable to expect the Claimant to have brought the matter to anyone's attention, or to have taken other precautions such as wiring the hook. Therefore, no responsibility, direct or indirect, can accrue to the Claimant in connection with the hook.

The only possible responsibility which might accrue to the Claimant, under the relevant rule and these circumstances, is if he was operating the crane at an unreasonably high speed as to cause bouncing of the magnet. However, there is no evidence to rebut the Claimant's contention that he was consciously watching his speed so as to prevent that.

In summary, the Carrier has not shown that the Claimant was acting unreasonably, wrecklessly, or in a manner which contributed to, or caused, the accident.

AWARD:

The Carrier is ordered to compensate the Claimant for all time lost.

Gil Vernon, Chairman

H. G. Harper, Employe Member

Barry E. Simon, Carrier Member

Dated: Sept 10, 1985