

PUBLIC LAW BOARD NO. 2960

AWARD NO. 13
CASE NO. 10

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The forty-five (45) day suspension assessed Machine Operator R. L. Upah was without just and sufficient cause, excessive and in violation of the Agreement (Carrier's File D-11-3-332).
2. Machine Operator R. L. Upah shall be compensated for all wage loss suffered."

OPINION OF THE BOARD:

On May 5, 1980, Carrier directed a Notice of Investigation to the Claimant on the following charge:

"Your responsibility concerning violation of Rule No. 422 of the Chicago and North Western Transportation Company's General Regulations and Safety Rules on May 3, 1980, at the East Yard, Tama, Iowa when Burro Crane system No. 17-779 came in contact with overhead high voltage wires."

Subsequent to the hearing, Claimant was given a 45-day suspension.

The hearing transcript reveals that the Claimant admits hitting the overhead wires with the crane he was operating. He also testified that at the time he hit the wires, he was not in the process of lifting but only traveling and that he had the boom in an upright position while doing so. The Claimant also admitted that he had been verbally warned a few weeks before not to travel with the boom in an upright position. He also acknowledged understanding Rule

422, which states:

"Person in charge of derricks or crane must take special care to safeguard workmen and himself from overhead wires."

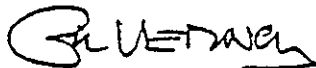
The record also reflects that the crane sustained approximately \$5200 worth of damage. It is the conclusion of the Board that Claimant's guilty is abundantly clear.

The Organization argues the Claimant did not receive a fair hearing and as a result was not afforded the due process he is entitled to under the Agreement. We have carefully considered all the arguments made in this regard and it is our conclusion that while the procedure was different from normal it has not been shown that it materially prejudiced the Claimant's rights.


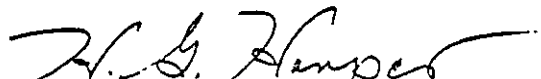
Regarding the appropriateness of the discipline, we do not find it excessive.

AWARD

Claim denied.



Gil Vernon, Chairman


J. D. Crawford, Carrier Member
H. G. Harper, Employee Member

Date:

Feb 5, 1982