

PUBLIC LAW BOARD NO. 2960

AWARD NO. 52

CASE NO. 33

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & Northwestern Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The twenty (20) day suspension assessed Machine Operator G. J. Mathies was without just and sufficient cause and on the basis of unproven charges. (Organization File 4B-1652; Carrier's File D-11-3-344.)

(2) Machine Operator G. J. Mathies shall be allowed the remedy prescribed in Rule 19(d).

OPINION OF THE BOARD:

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

On January 7, 1981, the Carrier directed the Claimant by letter to attend an investigation. The letter read in pertinent part as follows:

"Your responsibility in connection with accident resulting in damage to Railroad Crossing signal when Crane you were operating struck signal at Maple River Jct. at approximately 10:45 a.m., January 5, 1981."

On February 5, 1981, the Carrier advised the Claimant as follows that he was assessed a 20-day suspension:

"Enclosed please find all papers in connection with hearing held to determine your responsibility in connection with accident resulting in damage to railroad crossing signal when crane you were operating struck signal at Maple River Jct. at approximately 10:45 a.m., January 5, 1981.

Please sign receipt for Discipline Notice No. 81-2 indicating 20 days actual suspension and receipt for Notice to Service Deferred Suspension No. 51-A indicating is is now necessary for you to serve the previously deferred 60 days suspension, detach receipts and return to this office promptly."

The basic facts are not in dispute. On the day in question, the Claimant was the Operator of a "little giant" crane. The crane has on and off track capabilities. The Claimant had determined that the crane direction on the track would have to be reversed so he decided to turn the machine around at a road crossing. To assist in the turn, the Claimant placed another employe in the road crossing for at least the purpose of protecting the crane movement from highway traffic. In the process of making the 180 turn, the crane backed into the signal.

At the investigation, several Rules were discussed. They are quoted below:

Rule 1011:

Employees in charge of work equipment will be personally responsible for the safe operation of the equipment.

Rule 1031:

Operators must approach persons, animals, equipment on adjacent track, etc., prepared to stop. They must also keep a sharp lookout for all obstructions, especially in flangeways at public and private crossings, guard rails and frogs and for objects on the rails. Rail sweeps must be used at all times when provided.

Rule 1069:

It is the duty of all occupants of hy-rail vehicles to aid the operator in safe handling of the vehicle.

Rule 1072:

Lookout must be maintained in both directions when hy-rail vehicles are in use. Hy-rail vehicles are not to be operated with less than one occupant in addition to the operator unless authorized by special authority.

A review of the evidence and the arguments leads the Board to conclude that there is substantial evidence to support the charge. The Organization's arguments--while well made--were not sufficient to overcome the presumption of guilt established by the Carrier. The Organization argued that Mr. Mathies was not responsible for the accident because he was only responding to hand signals given by Employee Ewolt. However, it was abundantly clear from the Claimant and Ewolt, under direct examination, that Ewolt was in front of the crane and not in a position to observe any potential obstructions as the crane backed up. With a limited view from his mirrors, it would have been prudent for the Claimant to make sure Ewolt was in a position to give clearance for the crane as it backed up. There was no indication in the record that the Claimant took exception to Ewolt's position or engaged in any independent perusal of the area for potential obstructions before backing up. Failure on the Claimant's part to do so contributed in part to the accident.

Thus, under the circumstances, the discipline was reasonable. In regard to the quantum of discipline, it is noted that the 60-day deferred suspension, that the Claimant was required to serve in connection with the 20-day suspension for the instant case, was also for an accident with the "little giant" crane.

AWARD

The claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employer Member



J. D. Crawford, Carrier Member

Date: 2/16/84