

PUBLIC LAW BOARD NUMBER 3530

Award Number: 41
Case Number: 41

PARTIES TO DISPUTE

NORFOLK AND WESTERN RAILWAY COMPANY

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Statement of Claim

Claim of Saul Waller for pay for 59 days with vacation and seniority rights unimpaired.

FINDINGS

This dispute involves the conduct of the Claimant, a Machine Operator, on August 18, 1983 at St. Regis Spur Track, Bucyrus, Ohio. On September 23, an investigation was held to determine the Claimant's role in allowing the bucket of Burro Crane 16367 to strike Vehicle Number 2950, a dump truck, and, damage the roof of the driver's compartment.

At the hearing, the Claimant testified that he was loading stone from a 100-ton hopper into the dump truck. He stated that he dropped a load of stones into the truck, and then began to swing the boom and the bucket away from the

truck. He testified that he lowered the bucket and boom slightly so that they would pass underneath some wires in the vicinity. He stated that the boom began to rattle and the bucket then fell on the roof of the truck. The Claimant stated that he did not know why the bucket fell, but admitted that it was possible that it slipped after he lowered it.

Mr. McCormick, a Roadway Machine Repairman, testified that he examined the Burro Crane on the day after the incident. He stated that there was nothing mechanically wrong with the crane.

Mr. Johnson, Roadmaster, testified about the damages to the dump truck. He testified that the roof of the cab had two dents. He stated that there was also a small hole, which was less than one inch in diameter, in the roof. He stated that the Kennedy Ford Garage of Marion had estimated that the repairs would cost \$430.00.

On October 13, 1983, the Carrier notified the Claimant that he had been suspended for 59 days. On November 11, the Organization filed a claim on his behalf. After a series of appeals, the Claim was denied by Mr. Steele, Assistant Vice President - Labor Relations on February 6, 1984.

The issue in this dispute is whether the suspension of the Claimant was for

just cause.

The position of the Organization is that the discipline assessed was unduly harsh and not justified.

The position of the Carrier is that the Claimant received a fair hearing during which it was shown that he damaged Vehicle No. 2950. The Carrier argues that the accident was a potentially dangerous one, and that the suspension was justified.

The Claimant was the only witness who actually saw the bucket fall and strike the truck. He stated that he was not sure why the bucket fell, but he thought it was possible that he allowed it to slip while he was lowering it. Mr. McCormick's examination revealed that there was nothing wrong with the Crane. It seems that there is no other logical explanation for the bucket falling, other than the Claimant allowing it to fall.

Since it appears that the Claimant's conduct led to the accident, some form of discipline is justified. The 59-day suspension would cost the Claimant nearly \$4,000.000 in wages. That seems to be unduly harsh, considering the actual damage caused by the accident was only \$430.00. It is the opinion of this

Board that in this particular situation, where the damage was not great and no one was injured, a 59-day suspension is unreasonable. The suspension shall be reduced to 30 days.

AWARD

The suspension shall be reduced to 30 days.

Nicholas Kumar
Neutral Member

J. A. Abbott, Jr.
Carrier Member

Bryce L. Hall
Organization Member

DATE: 1/13/86