

PUBLIC LAW BOARD NO. 3558

AWARD NO. 11
Case No. 11

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Machine Operator M. J. Landry requesting that his personal record be cleared of the charge of violating Southern Pacific Transportation Company Rule 801, 'Careless of the safety of themselves or others', on February 28, 1984, and that the 45 demerits assessed him shall be removed from his personal record."
(MW-83-126)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee respectively within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

On February 28, 1984, a Carrier-owned hydrolic crane (SPO 132) being operated by Claimant overturned, causing injury to Claimant and damage to the crane. At the time of the incident, Claimant had been a machine operator for the Carrier for about 7½ years.

It is the Carrier's position that Claimant had wilfully operated the crane in a negligent and unsafe manner. In this respect, Carrier states that by his own admission, as developed at a company hearing, Claimant had failed to set the outriggers down on the front of the crane while lifting box car frames, thereby turning the crane over on its side. Further, that Claimant knew of should have known that it was necessary he have placed pads of some type under the outriggers to prevent them from sinking into the soft ground surface, since just prior to the move in question, Claimant admitted he had put the two front riggers down, but "did not want to put them down" again because he had had difficulty retrieving the riggers from the ground because they did not have feet on them.

As concerns the question raised by Petitioner as to the crane not being in condition to be used for the purpose of lifting the box car frames, Carrier states Claimant could have requested corrective action be taken prior to operation of the crane in this manner on the basis of concern that the work could not be performed in a safe manner, but did not do so. Carrier also asserts that if, as Claimant alleged at the company hearing, he felt that the sling was not properly attached at the time he could have requested the cable hooks be repositioned and not have made the lift until he had checked the attachment of the sling.

It is Petitioner's contention that Carrier supervisory officials were well aware of the two outrigger pads being missing and that the crane had a defective hydraulic cylinder before dispatching Claimant and the crane to perform the work in question with outside contractor forces. It also argues that inexperienced contractor employees were used to hook a track panel sling to the frame of a box car in order to flip the frame over so they could have welders cut the frame up in small pieces. In this regard, Petitioner urges Claimant should have been working with Carrier employees and not contractor employees who, the Petitioner asserts, had hooked the two left hooks improperly, resulting in the weight being swung on the right side of the crane and thereby causing it to flip over.

In the Board's opinion, there is no question Claimant had prior knowledge of the defects on the crane he was assigned to operate. He was an experienced operator, and was familiar with the surface conditions of the ground on which he was working, namely, that it was a soft surface, and that in making a prior move with the crane it was necessary the two outriggers be placed on the ground and that some type of flat surface be placed under the feet to stabilize or block the crane before proceeding with the work performed in that instance.

Although Claimant may have thought he was going to be able to handle the move in a safe manner, and might have even relied upon others as to whether the hook-up was proper, the fact remains he was obliged to have assured that the move could be made in a manner that would not endanger his own safety or the safety of others. If nothing else, working on soft ground and with employees who may or may not have been familiar with crane operations, called for more, not less caution on the part of Claimant.

In the circumstances of record, the Board does not find assessment of 45 demerits to be an unreasonable or excessive discipline. The claim will, therefore, be denied.

AWARD:

Claim denied.


Robert E. Peterson, Chairman
and Neutral Member


C. B. Goyne, Carrier Member


M. A. Christie, Employee Member

San Antonio, TX
June 4, 1985