

SPECIAL BOARD OF ADJUSTMENT
PUBLIC LAW BOARD NO. 3729

CONSOLIDATED RAIL CORPORATION
"CARRIER"

-and-

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES
"ORGANIZATION"

CASE NO. 11

AWARD NO. 10

STATEMENT OF CLAIM:

Claim of the Brotherhood (CR-896-D) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1982, particularly Rule 27, when it assessed discipline of dismissal against Foreman James Taylor on July 17, 1984.

(b) Carrier's decision was arbitrary, capricious, excessive, and not supported by the record.

(c) Claimant Taylor's record will be cleared of the charge brought against him on July 13, 1984.

(d) Claimant Taylor be restored to service with seniority and all other rights unimpaired and compensated for all wage loss suffered as a result of this dismissal.

This case arose when the Carrier charged J. Taylor, herein-
after the Claimant, with failure to properly protect a burro crane.
The specific charge, contained in a notice dated July 13, 1984, was
as follows:

Failure to properly protect Burro Crane #3117 on the Eastbound Yard track in Amtrak Zoo Interlocking on Wednesday, July 11, 1984 when you failed to insure the application of a temporary derail resulting in Burro Crane #3117 and two push trucks rolling out onto the #109 switch and derailling at approximately 9:18 P.M. on July 11, 1984.

The hearing was held on July 13, 1984. The Claimant was present and represented by the Organization. Following the hearing, the Carrier notified the Claimant that he had been found guilty of the charge and assessed the penalty of dismissal. The above quoted claim was then filed on behalf of the Claimant. By letter dated August 17, 1984, the Carrier on the basis of leniency reduced the suspension to time held out of service, 30 days. The Organization rejected a reduction based on leniency and continued to process the claim.

The Claimant is a foreman with 28 years of railroad service. On July 11, 1984, the date of the incident giving rise to this claim, the Claimant was responsible for tying down the burro crane for the night. The Claimant went through certain procedures to secure the crane for the evening but did not apply a derail. Later that night the crane rolled and derailed.

POSITIONS OF THE PARTIES:

The Organization contends that the Carrier's decision was not supported by the record and is arbitrary. The Claimant tied down the crane on the night in question in the same manner as every other night. The crane would not have moved and derailed where it did unless someone tampered with it. Furthermore, a temporary

derail was not available for the Claimant to use.

The Carrier asserts that the record testimony establishes the Claimant's guilt of the charge. As there was no evidence of vandalism, the only logical explanation is that the Claimant did not properly secure the crane. Additionally, the Claimant failed to use a portable derail issued by the Carrier to secure the crane.

OPINION OF THE BOARD:

The Board has decided to sustain the claim. The record establishes that the Claimant, a long term employee with no past history of carelessness, secured the crane in the normal fashion, which did not include the use of a derail. Moreover, it appears the crane could not have rolled to the position at which it derailed without vandalism or a switch change. Accordingly, the claim shall be sustained.

AWARD:

The claim is sustained. The remedy shall be in accordance with Rule 27, Section 4 of the applicable Schedule Agreement. Monies owed shall be paid within 30 days.

SCOTT E. BUCHHEIT 11-21-85
SCOTT E. BUCHHEIT
Neutral Member

ROBERT O'NEILL 12/2/85
ROBERT O'NEILL
Carrier Member

J. P. CASSESE 11/26/85
J. P. CASSESE
Organization Member