

PUBLIC LAW BOARD NO. 3845

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of
Way Employees

and

Norfolk and Western Railway
Company (Lake Region)

Case No. 15
Award No. 15

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The Sixty (60) day suspension assessed Crane Operator D.M. Gates was without just and sufficient cause. [Organization MW-BVE-78-40]
- (2) Crane Operator D.M. Gates shall be allowed the remedy prescribed in Rule 22(e).

OPINION OF THE BOARD

At the time of the incident which gave rise to the instant grievance, Claimant had been employed by Carrier for more than twenty-five years and for over ten years as a Hoisting Engineer. He admitted to having failed, on February 19, 1980, to release a crane boom from its secured position prior to operation. It is evident from the testimony at hearing that, in his anxiety to respond to a supervisor's order to commence operation of the crane boom, he negligently forgot to first

ensure its freedom of movement. The result was damage estimated at over \$8,000.00 and as much as ten weeks down-time for the equipment.

Claimant offers in mitigation the fact that others, who allegedly were or should have been charged with assisting him in the operation of the equipment, did not in fact assist and were apparently not disciplined as a result. There was, however, no evidence proffered at hearing of negligence by other than Claimant and no suggestion that Claimant was discriminatorily singled out for discipline.

Carrier bases its discipline in this case on the severity of the damage caused by Claimant's negligence and a service record which reveals four prior infractions on three dates in 1977 and 1978. The most serious of these involved the derailment of a snowblower and a failure to wear safety equipment on February 25, 1977 for which Claimant received a ten day suspension and a deferred five-day suspension.

Claimant was given a fair and impartial hearing in full conformity with the collective bargaining agreement. The sole remaining issue, therefore, is whether a sixty-day suspension is excessive discipline under the circumstances of this case.

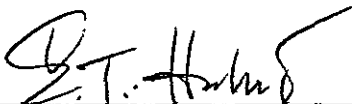
The theory of progressive discipline calls for greater punishment with each successive offense for the purpose of warning the employe and, thus, reforming his behavior pattern. The degree of discipline should not be measured strictly by the damage incurred but by the benefit to be derived therefrom. The

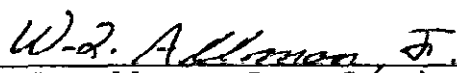
Board is conscious of the fact that Claimant acted carelessly but without malice; that some seven years have passed since the imposition of Claimant's sixty-day suspension and that such beneficial effects of discipline as might possibly be realized in this case have by now been realized in full. Claimant's thoughtlessness in this case can fairly be attributed in large measure to a mind-numbing excess of zeal on behalf of his employer.

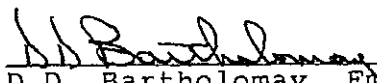
This Board considers, in light of all the circumstances of this case, thirty days of Claimant's suspension to have been excessive discipline.

AWARD

Claim denied except that the imposed suspension shall be reduced to thirty (30) days suspension.


E.T. Herbert, Neutral Member


W.L. Allman, Jr., Carrier Member


D.D. Bartholomay, Employee Member

Date: April 13, 1987