

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. 16

Award No. 16

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The disqualification of David M. Gates as a hoisting engineer was without just and sufficient cause and in violation of the Agreement.
- (2) Claimant David M. Gates shall have his seniority as a hoisting engineer reinstated and he shall be compensated for all wage loss suffered due to his disqualification."

OPINION OF THE BOARD

Claimant was disqualified as a hoisting engineer after an investigation which concluded that he was responsible for significant damage to one of Carrier's cranes on or about June 7, 1983. A broken three-quarter inch plug allowed all the gear lubricant to drain out of the crane's rear end housing. Subsequent operation of the crane resulted in the destruction of certain bushings, pinions and gears whose replacement cost

Carrier \$6,627.04 plus down-time. Claimant acknowledged at hearing that he was aware of his duty as operator of the crane to check the oil and lubricate the machinery on a daily basis.

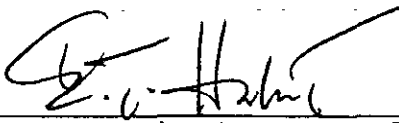
Carrier's repairman testified that the broken drain plug was visible on a walkaround inspection of the crane but Claimant contends he did not see it. While there is no evidence of record which establishes when the drain plug was broken, it may reasonably be inferred from the nature of the damage that the crane had been operated for more than one day on insufficient lubricant. Claimant testified that the last time he checked the oil in the crane was just before it left Indiana, a date some two weeks prior to discovery of the damage. There is convincing evidence in the record that Claimant's negligence was a major contributing factor in causing that damage and his removal from the position of hoisting engineer cannot, therefore, be said to be an abuse of Carrier's discretion.

Lastly, Employees contend that the letter of charge was "vague and brief ..." and "... not specific," depriving Claimant of a full opportunity to prepare his defenses. The letter of charge is indeed brief, but it is not vague, identifying as it does the equipment in question, the person who discovered the damage, and both the date and place of the discovery. Given the fact that Claimant was present at the scene of the discovery of the damage, it is difficult to imagine what further information he would need in order to prepare his defense. The Board concludes that Claimant was given a fair and impartial hearing

and afforded full due process in conformity with the collective bargaining agreement.

AWARD

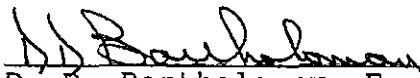
Claim denied.



E. T. Herbert, Neutral Member



W. L. Allman, Jr., Carrier Member



D. D. Bartholomay, Employee Member

Date: April 13, 1987