

SEPT 18 89

Case No. 33

Brotherhood of Maintenance of Way  
Employees

**VS.**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

2. The Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

The suspension was appealed by the Organization in a timely manner and is now before this Board for adjudication.

The Organization maintains that Carrier's imposition of discipline was improper. It asserts that Carrier did not present any evidence to support its allegation that the Claimant struck the power line with the Burro Crane boom. It further states that the testimony of two employees present at the time the incident occurred did not observe the boom strike the power line. The Organization argues that simply because Claimant was operating the Burro Crane at the time the incident occurred does not establish responsibility for the incident. The Organization asks that

Claimant's record be cleared of all reference to this matter and that he be compensated for the wages he lost.

Carrier, on the other hand, insists that the testimony of the two witnesses reveals that the Burro Crane touched or came in close proximity to the power line causing it to arc and result in a fire. It asserts that there exists no other explanation for the cause of the fire. Additionally, Carrier points out that Claimant testified that the boom on his machine came in close contact with the power line which resulted in the fire. As such, Carrier argues that Claimant was responsible for the incident justifying the imposition of the penalty of a thirty day suspension.

A close analysis of the record concludes that the claim must be denied. There was sufficient, competent and credible evidence adduced to support Carrier's conclusions as to Claimant's responsibility in the incident. On April 23, 1984 Claimant was operating the boom on the Burro Crane. The boom came within close proximity of the power line causing the resultant fire. As such, the operator of the machinery is responsible for any actions that occur.

Although the Organization maintains that the two employees did not observe the boom strike the power line, there exists no other plausible explanation for the fire. The boom had to strike the power line to account for the sparks causing the subsequent fire.

We find that the assessment of a thirty day suspension was neither discriminatory, unreasonable or arbitrary. Accordingly, the claim will be denied.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

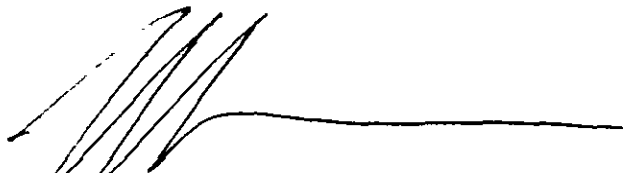
That the Agreement was not violated.

AWARD:

Claim denied.

  
P. Swanson, Employee Member

  
E. Kallinen, Carrier Member

  
Martin F. Scheinman, Neutral Member

9/5/89