

PUBLIC LAW BOARD NO. 4402

**PARTIES
TO
DISPUTE**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
BURLINGTON NORTHERN RAILROAD COMPANY**

STATEMENT OF CLAIM

1. The discipline [thirty (30) days of suspension and restriction from operating Group 1 machines] imposed upon Machine Operator A. J. Terrones for alleged violation of Rule 600 of the Rules of the Maintenance of Way Department for alleged failure to operate Locomotive Crane BN975315 in a safe manner, was without just and sufficient cause and excessive (System File WE/Gr. Denver 10 DI - A. J. Terrones).
2. Mr. A. J. Terrones' seniority as a Group 1 machine operator shall be reinstated and unimpaired, he shall be reassigned as a operator of Locomotive Crane BN975315, his record shall be cleared of the charge leveled against him, he shall be compensated for all wage loss suffered, including overtime during his suspension and he shall be allowed the difference between what he would have received as a Group 1 operator and what he was paid during his disqualification period.

OPINION OF BOARD

As a result of charges dated March 26, 1985, investigation held on April 3, 1985, and by letter dated April 25, 1985, Claimant, an employce since April 1976, was suspended for 30 days and disqualified from operating Group 1 machines.

On March 25, 1985, Claimant was operating a locomotive crane in the vicinity of Nacco Junction, Wyoming. In the process of operating the crane loading scrap, Claimant lowered the boom and struck a gondola car resulting in an estimated \$2500 damage. Claimant could not see the edge of the car because of the location of the magnet spool.

Claimant testified (Tr. 13):

- Q. Mr. Terrones, what caused the damage to the boom on the Locomotive Crane?
- A. As I was booming down, the high side of the gondola which I could not see because of my magnet spool, hit the boom as I was booming

down and started to bend it. As soon as I noticed the upward brake bars bending, I immediately raised by boom back up.

Q. Mr. Terrones, what kind of action could have been taken to prevent from booming down to reach the pile of scrap?

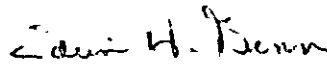
A. I guess I could have kept in a high boom and had the crane moved the 2 or 3 feet which I needed to pick up the pile.

Rule 600 requires a machine operator to work in a safe manner and further holds the machine operator responsible for negligence. Substantial evidence exists in this record to support the Carrier's conclusion that Claimant violated that rule. Claimant admitted that he could not see the high side of the gondola and all that he had to do to avoid the accident was to have the crane moved two or three feet. Given that evidence, we cannot say that a 30 day suspension was arbitrary or capricious.

However, we agree with the Organization that disqualification of Claimant from operating Group 1 machines was excessive. Under the circumstances, the 30 day suspension was sufficiently commensurate with the offense.

AWARD

Claim sustained in part. Claimant's Group 1 operating rights are reinstated. The remainder of the claim is denied.



Edwin H. Benn
Neutral Member



E. J. Kallinen
Carrier Member



P. S. Swanson
Organization Member

Denver, Colorado
May 31, 1989