

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 4

Carrier File No. AMWB 87-10-16
Organization File No. S-S-427

STATEMENT OF CLAIM

1. The five (5) days' suspension imposed upon Machine Operator S. R. Frank for alleged violation of Rule 563 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File S-S-427/AMWB 87-10-16).

2. As a result of the aforestated violation, Claimant S. R. Frank shall be paid:

" . . . wages for 5 days from June 29, 1987 through and including July 3, 1987, credit for all fringe benefits, pay for all expenses and travel time to attend this Investigation and the removal of this Investigation from his personal records."

F I N D I N G S

Following an investigative hearing, the Claimant herein was assessed a penalty of five days' suspension. Claimant was the operator of the "Stork" crane. The crane was moved to a different location by means of a work train. The Claimant

accompanied the crane on its relocation.

While en route, the work train experienced difficulty on a bridge. As a result, a "leg" of the crane hit the side of the bridge, causing the leg to fall off the crane and come to rest under the wheels of the next car, which derailed as a result.

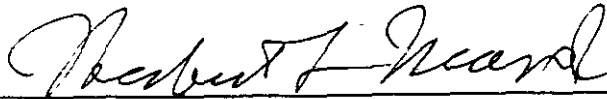
The Board does not lightly interfere with the Carrier's determination of guilt and the imposition of an adequate disciplinary step. However, a review of the entire record demonstrates to the Board's satisfaction that there was insufficient proof of the Claimant's assumed responsibility for the derailment. The Roadmaster had been advised of the preference of transporting the crane on a flat car, rather than the gondola. During the course of the trip, the Claimant inspected the crane to insure its safety. The Roadmaster and others were also aware of a missing pin on one leg of the crane, but no steps were taken to remedy this.

In a written statement made part of the hearing record, the Conductor of the work train stated that after unloading several cars ". . . the Stork was again checked for movement. It was decided that the Stork was riding fine and would be okay for movement" to its destination. The Conductor also stated, "I feel that the Stork should have been placed on its own flat [car] for safety reasons".

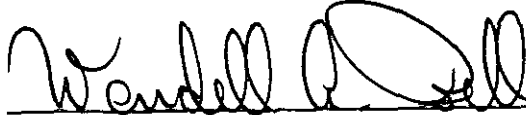
Upon review, the Board finds no basis to place blame on the Claimant. Nothing was shown to determine that the Claimant failed to follow instructions or act improperly in any other manner. The discipline was not warranted.

A W A R D

Claim sustained. The Carrier is directed to put this Award into effect within thirty days of the date of this Award.



HERBERT L. MARX, JR., Chairman and Neutral Member



WENDELL A. BELL, Carrier Member



MARK J. SCHAPPAUGH, Employee Member

NEW YORK, NY

DATED: 8/17/90