NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)
	) Case No. 31
and	)
	) Award No. 27
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY	)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
J. F. Ingham, Carrier Member

Hearing Date: December 11, 2003

STATEMENT OF CLAIM:

1. The dismissal of Crane Operator D. J. Connell for allegedly violating Rule 9.13 by failing to report damage to Crane 374 between August 14 and 17, 2002 was without just and sufficient cause and based on an unproven charge (System File UM-15-02/GC-13-02).

2. As a consequence of the violation referred to in Part (1) above, D. J. Connell shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Public Law Board No. 5905, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On August 28, 2002, Carrier directed Claimant to report for an investigation on September 5, 2002, concerning his alleged violation of Rule 9.13 concerning damage to Crane 374 between August 14 and 17, 2002. The hearing was held as scheduled. On September 11, 2002, Carrier notified Claimant that he had been found guilty of the charge and dismissed from service.

The record reveals that on Sunday, August 18, 2002, the Assistant Maintenance Supervisor was called out on a derailment at Joliet Yard. He noticed damage to the back of Crane 374. The crane was parked at the Joliet Truck Garage next to the jet snow blowers. The

damage was to the right rear corner of the upper rotating cab, adjacent to the track on which the snow blower was sitting. The damage to the crane was of the type that would occur by swinging up into the side of a railroad car. Given the position of the crane in the garage, it could not have been caused by the crane being struck from the roadway while it was parked.

The record further reveals that Claimant operated Crane 374 on August 15 and 16, 2002. Claimant did not report any damage to the crane. Rule 9.13 provides, "Employees are responsible for reporting damage to vehicles, tools or equipment as soon as practical following occurrence, but in no instance later than the end of their shift." We conclude that Carrier proved the charge by substantial evidence.

In Case No. 21, Award No. 18, we considered Claimant's dismissal for violating Rule 1.16. We found that Carrier proved the violation by substantial evidence but further found that the penalty of dismissal was excessive. We ordered Carrier "to reinstate Claimant with seniority unimpaired but without compensation for time held out of service. Reinstatement will be on a last chance basis. Any subsequent rule violation or other act of misfeasance or malfeasance, no matter how minor, shall be cause for Claimant's permanent dismissal."

We further stated, "Claimant is admonished that this award does not diminish the seriousness of his violation and is further admonished of the need to correct his conduct immediately. Claimant shall have this one last chance but if he squanders it, Carrier shall have the right to terminate his employment permanently."

It is apparent that Claimant squandered the last chance that Award No. 18 afforded him. Claimant's dismissal was in accordance with Award No. 18.

AWARD

Claim denied.

Martin H. Malin, Chairman

J.F. Ingham
Carrier Member

D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, March 15, 2004.