

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

)
) Case No. 32
)
) Award No. 28
)

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 230 on August 1, 2002 was without just and sufficient cause and based on an unproven charge (System File UM-14-02/GC-12-02).
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.

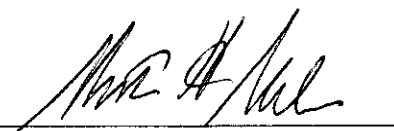
On August 28, 2002, Carrier directed Claimant to report for an investigation on September 5, 2002, concerning his alleged violation of Rule 9.13 concerning damage to Crane 230 on August 1, 2002. The hearing was held as scheduled. On September 11, 2002, Carrier notified Claimant that he had been found guilty of the charge and dismissed from service.

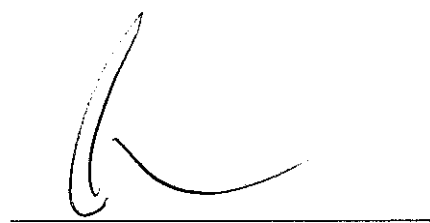
In Case No. 31, Award No. 27, we denied the claim arising out of Claimant's dismissal effective September 11, 2002, from an investigation held on September 5, 2002. This case involves another investigation held on September 5, 2002, which resulted in Claimant's dismissal effective September 11, 2002. The investigation and dismissal in the instant case are

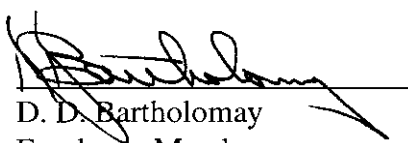
independent of the investigation and dismissal that were before us in Case No. 31, Award No. 27. However, in light of our denial of the claim in Case No. 31, Award No. 27, Claimant will remain in a dismissed status and will not be entitled to relief regardless of the outcome of the instant case. Accordingly, we hold that, in light of our decision in Case No. 31, Award No. 27, the instant case is moot.

AWARD

Claim dismissed.



Martin H. Malin, Chairman

J.F. Ingham
Carrier Member

D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, March 15, 2004.