

PUBLIC LAW BOARD NO. 2960

AWARD NO. 72
CASE NO. 64

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The disqualification of M. E. Perrier from his position as Boom Truck Operator and the loss of all common machine operator rights for alleged improper and unsafe operation of a boom truck was without just and sufficient cause and on the basis of an unproven charge. (Organization File 7F-1839; Carrier File D-11-21-67).
- (2) The discipline assessed Machine Operator M. F. Perrier shall be rescinded in accordance with Rule 19(d).

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On April 21, 1981, the Carrier directed the Claimant to attend an investigation. The charges were as follows:

"Charges: Your responsibility for your improper and unsafe operations of boom truck at East St. Paul, Mn. on April

16, 1981 while assigned as Boom Truck Operator at East St. Paul."

On May 29, 1981, the Carrier disqualified the Claimant as a Boom Truck Operator and revoked the Claimant's common machine operator seniority right. He had a hire date of August 7, 1975, and machine operator date of December 4, 1977.

A review of the transcript convinces the Board that the Carrier's findings that the Claimant improperly and in an unsafe manner operated the boom truck is supported by substantial evidence. The Claimant, in the short time, engaged in several movements which could have resulted in injury to himself and other employees and damage to equipment. In fact the Claimant's unsafe operation was brought to the supervisor's attention by employees working with the Claimant. We are not convinced that the condition of the equipment contributed in any material or significant way to the incidents. The Claimant effectively admitted he could have and should have operated the crane differently in at least two of the five instances cited by the roadmaster as improper.

The Organization also argues that permanent revocation of machine operator seniority rights is excessive. The Carrier argues that permanent revocation is not excessive when the Claimant's past record is considered.

On this point as well, we must agree with the Carrier. If this incident stood alone, we may have viewed the discipline excessive. However, the Claimant's past record reflects three other incidents of the improper or unsafe operation of equipment. It is apparent the Carrier's disciplinary efforts had no meaningful effect on the Claimant's repeated and careless disregard for the proper and safe operation of equipment. Thus, under the circumstances, we will not disturb the Carrier's

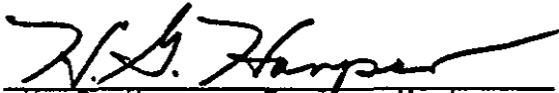
findings. However, nothing in this award should be construed as preventing the Carrier from giving the Claimant another opportunity to re-qualify at some time in the future.

AWARD:

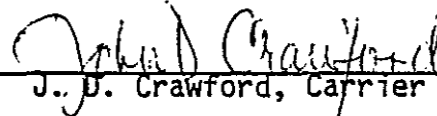
The Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated:

