

PUBLIC LAW BOARD NO. 2960

AWARD NO. 75
CASE NO. 82

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 discipline (disqualification as Burro Crane Operator and loss of all machine operators seniority) assessed Roger A. White for allegedly failing to properly operate and maintain Burro Crane 17-1788 was without just and sufficient cause and on the basis of unproven charges. (Organization File 7D-2579; Carrier file D-11-19-81).
- (2) Claimant Roger A. White shall have all seniority in all machine operators classes previously held restored, returned to his position as operator of Burro Crane 17-1788 and compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and the Carrier 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 October 19, 1981, the Carrier directed the Claimant to attend an investigation. The notice read in pertinent part as follows:

"You are hereby directed to appear for a formal hearing as indicated below:

Place: Office of ADM-E, Room 704, 275 E. Fourth Street,
St. Paul, Minn. 55101

Time: 11:00 A.M.

Date: Thursday, October 22, 1981

Charges: Your responsibility for your failure to properly operate and maintain Burro Crane assigned to you resulting in damage discovered on October 12, 1981, while you were assigned as machine operator at East St. Paul, Minn.

"You may be accompanied by one or more persons of your own choosing, subject to provisions of applicable rules in the applicable schedule and you may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company. An extra copy of this letter is provided for you to indicate receipt and understanding by affixing your signature, date, and time of receipt below."

Subsequent to the investigation, the Carrier assessed the discipline now on appeal before the Board.

At the hearing, it was established that on the date in question, the Claimant was operating the Burro Crane on the main line when he heard a loud "clunk" in his machine. When the Claimant heard this noise he also noted that the warning light in his cab had blinked on and off and then extinguished completely and immediately shut the machine down. The Claimant then conducted a general inspection for lubricant leakage and excessive heat. The Claimant elected to add 30 weight lubricating oil to the gear case of this machine and move it into the clear. The Claimant was required to operate this machine approximately one mile to clear the main line. He contacted his supervisors the next day and told them about the incident. An inspection occurred and it was found that the center shaft of the Burro Crane had been severely damaged along with most of the gears in the center gear

case. The estimated cost of repairing these damaged parts was approximately \$30,000.00.

In view of the Claimant's own testimony, we must conclude that he bears, to a material degree, responsibility for the incident. He clearly admitted that not only was 30 weight oil the improper lubricant, but he also acknowledged knowing at the time that the proper procedure in such a case would be not to operate the machine and be towed. While there may have been damage to the machine prior to his inspection, it strains one's sense of reason to believe that operation of the machine in clear contravention of the manufacturer's instructions did not at least contribute or compound an already existing problem.

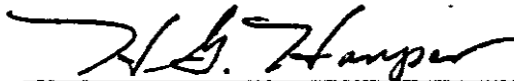
With respect to the penalty, the degree of damage to the crane and the Claimant's past record is noted. The Claimant had previously been reprimanded for improper maintenance and operation of a boom truck. In view of these factors, the discipline cannot be considered excessive. However, nothing in the Award should be construed as preventing the Carrier from giving consideration to reinstating the Claimant's machine operator rights at some date in the future.

AWARD:

The Claim is denied.



G. Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: 1/15/85