

PUBLIC LAW BOARD NO. 2960

AWARD NO. 93
CASE NO. 114

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 thirty (30) day suspension assessed Machine Operator W. D. Schulz was without just and sufficient cause, arbitrary, capricious and totally unwarranted. (Organization File 6D-3674; Carrier File 81-83-124-D).
- (2) Machine Operator W. D. Schulz shall have his record cleared of this incident and he shall be 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 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 February 25, 1983, the Carrier directed the Claimant to attend an investigation on the following charge:

"Your responsibility in connection with tipping on side and damages to Burro Crane, System Machine No. 17-2827, at approximately 12:45 PM on February 25, 1983, at MP 85.1 near Norfolk, Nebraska, while operating said crane."

Subsequent to the investigation the Claimant was assessed the discipline now on appeal before the Board.

It is undisputed that in the process of moving a large rock the crane tipped on its side causing \$25,000 - \$30,000 in damage.

It has been stated before that simply because an accident happens, an employe isn't necessarily at fault. However, in this case there is no other satisfactory explanation other than that the accident was caused at least in substantial part by operator error.

The Organization contends that the boom was too long and that this caused the accident. However, it is obvious that the boom was suited to the crane and compatible with the manufacturer's design. Beyond this there is no probative evidence that the boom was ill-suited for the crane. This is mere speculation on the Organization's part. Nor can we accept that the Claimant wasn't qualified to operate the machine. We must conclude on the other hand that the accident was caused by the Claimant's failure to properly operate the crane under the circumstances.

AWARD

In view of the foregoing, the Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: May 8, 1985