

PUBLIC LAW BOARD NUMBER 3530

Award Number: 16

Case Number: 16

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Machine Operator, C.H. Wells, Route 1, Box 158, Union Level, Virginia, 23973, was assessed thirty (30) days actual suspension for allegedly being responsible for a collision of Tamper 14278 and Burro Crane 11144. Employees request pay for time lost, with vacation and seniority rights unimpaired.

FINDINGS:

On February 12, 1982, Claimant was working as a Machine Operator on Burro Crane 11144. Claimant's Burro Crane collided with Tamper 1428 near Mile Post L-22 on that date. As a result of that incident, Claimant was assessed a thirty-day actual suspension for his responsibility in connection with the collision. A hearing was held in order to investigate the charges against Claimant and other members of the Burro Crane and Tamper crews. On the basis of the evidence adduced during the investigation, Carrier determined that

Claimant was culpable as charged and that the discipline assessed against Claimant was justified.

The Organization filed a claim protesting Carrier's actions and requesting that Carrier pay Claimant for time lost, with vacation and seniority rights unimpaired. The Claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether Claimant's suspension was supported by just cause; and if not, what should the remedy be.

A review of the record shows that the crane Claimant was operating on February 12, 1982 had been manufactured in 1953, and that it was equipped with two sets of brakes. One brake consisted of a fiber-lined band that was designed to tighten around a drum attached to the crane's driveline. This brake was operated by a pedal in the operator's cabin, and was intended for use while the crane was moving. The second set of brakes consisted of mechanical brakes similar to those on a flat car. They were operated by means of a brake wheel located on the deck of the crane which, when turned, forced brake shoes against the crane's wheels. These brakes were intended to be used for tying down the crane when it was at rest. The record also shows that the crane had been converted from gasoline to diesel power, and that the diesel engine was operated

by means of an improvised throttle handle consisting of a pair of vice-grip pliers.

According to Claimant, the footbrake was only marginally effective and had to be constantly adjusted to provide any stopping power at all. Claimant testified that the "parking" brake was also of little use, since the rigging had been bent so that two of the brake shoes did not contact the crane's wheels. Claimant testified further that the crane was slowed mainly by downshifting the transmission, so that the engine braking would be supplied. According to Claimant, the crane could not be stopped in a short distance in this manner, and downshifting had in any case, been rendered more difficult by the installation of the diesel engine and the jury-rigged hand throttle.

The Organization contends that the collision occurred as a result of the poor condition of the crane. However, Claimant had been operating the crane for quite some time in the same condition that it was in on the day of the collision. While he once informed a Carrier official that the "parking" brake was ineffective, there is no evidence that Claimant ever informed anyone that he considered the crane to be unsafe.

On the day in question, Claimant knew that the Tamper would be operating in the area in which the collision occurred. Since Claimant evidently considered the crane to be safe to operate under the circumstances, it was his

responsibility, in accordance with Carrier's Operating Rules, to operate the crane in such a manner that it could be stopped within one-half the range of vision where visibility is impaired. This Claimant clearly failed to do. This Board is not unmindful of the fact that the crane was hard to stop. This fact does not serve to exonerate Claimant, however, since it was his responsibility to operate the crane in accordance with the Operating Rules once he had taken it out on the line. In view of the danger to crews and equipment involved in a collision of the type that occurred in the instant case, it cannot be held that the thirty-day suspension was excessive or overly harsh.

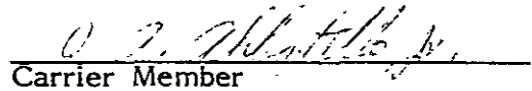
It is the opinion of this Board that the record contains clear and convincing evidence of Claimant's cupability, and that the discipline imposed was not harsh or excessive under the circumstances. Accordingly, the claim is denied.

AWARD:

Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 1-25-55