

PUBLIC LAW BOARD NUMBER 3530

Award Number: 28

Case Number: 28

PARTIES TO DISPUTE

NORFOLK AND WESTERN RAILWAY COMPANY

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM

Claim of D.A. Hurt for pay for five days with vacation and seniority unimpaired.

FINDINGS

This dispute involves the conduct of the Claimant, a Crane Operator, on February 3, 1983. An investigation was conducted on April 8, 1983 concerning the following charge brought against the Claimant:

Your persistence in unsafe work practices on February 3, 1983, at approximately 11:40 AM, Hopewell, Virginia at which time you were operating Burro Crane 10300 causing injury to Assistant Crane Operator W. V. MacPherson.

Testimony at the hearing revealed that the Claimant and Mr. MacPherson were having difficulty with the crane that morning because the generator belt

on the crane engine slipped several times. The two men repeatedly attempted to repair the belt. At one point, while Mr. MacPherson was applying belt dressing to the generator with his finger, the Claimant started the crane engine, injuring Mr. MacPherson's finger.

Mr. MacPherson testified that he had found the tube of belt dressing, began applying it to the belt with his finger and then handed the tube to the Claimant. According to Mr. MacPherson, the Claimant then started the engine without saying a word or warning him as required.

The Claimant testified that he did inform Mr. MacPherson that he was going to start the engine, but Mr. MacPherson did not acknowledge or answer him. He stated that Mr. MacPherson has never acknowledged such a warning when the Claimant has worked with him.

Mr. Tribble, Roadmaster, stated at the hearing that he questioned Mr. MacPherson and the Claimant on the day after the incident. Mr. Tribble testified that the two men told him that the Claimant did not say that he was planning to start the engine and that Mr. MacPherson did not say that he was still applying belt dressing.

At the hearing, the Claimant's prior disciplinary record for safety violations was reviewed. This record included two verbal warnings, two written

warnings and a 30-day deferred suspension.

On April 27, 1983, the Claimant was suspended for five days for his role in the incident. On June 28, the Organization filed a claim on his behalf. After a series of appeals, the Claim was denied by Mr. Steele Assistant Vice President - Labor Relations, on December 21, 1983.

The issue in this dispute is whether the Claimant's five-day suspension was for just cause.

The position of the Organization is that the Carrier failed to prove that the Claimant was negligent because the Claimant did warn Mr. MacPherson. The Organization also argues that the Claimant's prior record should not have been reviewed because it had nothing to do with the charge.

The position of the Carrier is that the Claimant received a fair hearing, during which it was shown that he was negligent. The Carrier maintains that due to the Claimant's prior disciplinary record, the suspension was justified in this situation.

If the Board was to believe Mr. MacPherson's testimony that the Claimant did not give a warning, it would be clear that the Claimant was guilty of

negligence. If the Board was to believe Mr. Tribble's testimony that the Claimant admitted that he failed to warn Mr. MacPherson, the Claimant would be guilty as charged.

The Claimant testified that he did warn Mr. MacPherson. Even if the Board was to believe this, the Claimant still should not have started the engine until Mr. MacPherson acknowledged the warning. It was fortunate that Mr. MacPherson's injury was not severe.

The Claimant testified that Mr. MacPherson never acknowledged warnings, but that is not an adequate reason for the Claimant's actions. For example, Mr. MacPherson may not have heard this warning. In a situation such as this, where serious injuries are possible and safety should be the first on everyone's mind, a crane operator who starts his engine when his assistant has not acknowledged the warning is negligent. Therefore, even if the Claimant did give a warning, he was negligent for not waiting for a response.

In light of the Claimant's prior disciplinary record for safety violations, and his negligence in this incident, it is the opinion of this Board that the five-day suspension was justified.

AWARD

Claim denied.

Nicholas Pumas
Neutral Member

J. A. Abbattuto, Jr.
Carrier Member

Bruce L. Hall,
Organization Member

DATE:

4/13/86