

SEPT 18 89

PUBLIC LAW BOARD NO. 4104

P.S.	DWK	
	EJR	
PARTIES TO DISPUTE:		
	RES	
	CRA	

Case No. 33

Brotherhood of Maintenance of Way
Employees

vs.

Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood that:

1. The thirty days suspension imposed upon Bruno Crane
Operator D.K. Carley for alleged 'violation of Rules 418, 600 and
602 was arbitrary, without just and sufficient cause and on the
basis of unproven charges. (System File WE/GR GMWA 84-10-18)

2. The Claimant's record shall be cleared of the charge
leveled against him and he shall be compensated for all wage loss
suffered."

OPINION OF THE BOARD: Claimant, Machine Operator D.K. Carley,
after investigation, was assessed a thirty day suspension for an
incident that occurred on April 23, 1984. Specifically, Claimant
was found guilty of striking a power line with the boom of a Burro
Crane resulting in a right-of-way fire and damage to 60 track ties.

The suspension was appealed by the Organization in a timely
manner and is now before this Board for adjudication.

The Organization maintains that Carrier's imposition of
discipline was improper. It asserts that Carrier did not present
any evidence to support its allegation that the Claimant struck the
power line with the Burro Crane boom. It further states that the
testimony of two employees present at the time the incident
occurred did not observe the boom strike the power line. The
Organization argues that simply because Claimant was operating the
Burro Crane at the time the incident occurred does not establish
responsibility for the incident. The Organization asks that

Claimant's record be cleared of all reference to this matter and that he be compensated for the wages he lost.

Carrier, on the other hand, insists that the testimony of the two witnesses reveals that the Burro Crane touched or came in close proximity to the power line causing it to arc and result in a fire. It asserts that there exists no other explanation for the cause of the fire. Additionally, Carrier points out that Claimant testified that the boom on his machine came in close contact with the power line which resulted in the fire. As such, Carrier argues that Claimant was responsible for the incident justifying the imposition of the penalty of a thirty day suspension.

A close analysis of the record concludes that the claim must be denied. There was sufficient, competent and credible evidence adduced to support Carrier's conclusions as to Claimant's responsibility in the incident. On April 23, 1984 Claimant was operating the boom on the Burro Crane. The boom came within close proximity of the power line causing the resultant fire. As such, the operator of the machinery is responsible for any actions that occur.

Although the Organization maintains that the two employees did not observe the boom strike the power line, there exists no other plausible explanation for the fire. The boom had to strike the power line to account for the sparks causing the subsequent fire.

We find that the assessment of a thirty day suspension was neither discriminatory, unreasonable or arbitrary. Accordingly, the claim will be denied.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

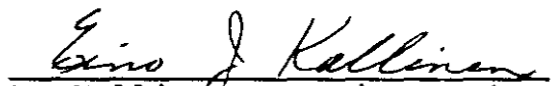
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

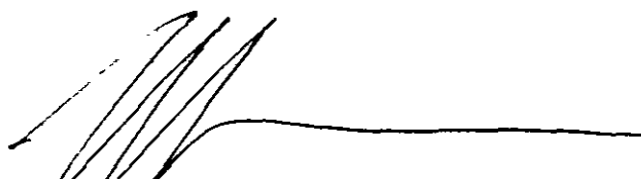
That the Agreement was not violated.

AWARD:

Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

9/5/89