

PUBLIC LAW BOARD NO. 4340

Joseph Lazar, Referee

AWARD NO. 14
CASE NO. 14

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
vs
BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF
CLAIM:

Claim in behalf of Ronald Duckworth that the
censure be removed from his service record
which was assessed as a result of his respon-
sibility for damage done to company truck.

FINDINGS:

The Board, on consideration of the whole record
and all the evidence, finds that the parties
herein are Carrier and Employee within the meaning of the Railway
Labor Act, as amended, that this Board is duly constituted by Agree-
ment dated April 10, 1987, that it has jurisdiction of the parties
and the subject matter, and that, pursuant to the Agreement dated
April 10, 1987, oral hearing by the parties, including Claimant,
has been duly waived.

Claimant Ronald Duckworth was "CENSURED for
violation of Rules 563, 564, 338, 379 of the
Burlington Northern Railroad Safety Rules and
General Rules as your part of the responsibility of
Company truck 74615 being damaged near Cordova,
AL on October 12, 1987 at or around 12:35PM."

The transcript of investigation conducted at
Birmingham, Alabama on November 24, 1987 shows the following test-
imony of Roadmaster L. B. Lang:

- "Q. ...In your own words, relate what happened, what Mr. Duckworth
told you.
- A. Mr. Duckworth said that he got in the truck and was going to
operate the boom and unload some ties and he inadvertently put
the dump mechanism of the bed in gear and revved the engine up
to operate the crane, of course when he did, the bed was pinned,
the pins were not removed, the safety pins that hold the bed
from tipping up when you go down the road, of course the pres-
sure of the hydraulics just tried to raise the bed and it wouldn't
go up and it just pushed the center of the bed up.

- Q. Because the safety pins were left in?
A. The safety pins were installed after it should have been.
- Q. Did Mr. Duckworth offer a reason why the pins were left in?
A. No sir. He didn't know anything other than he was trying to operate the boom and the bed went to working. (Tr., p. 6).

- Q. Alright, so the first thing you want to do to raise the bed is to remove the safety pins, is this correct?
A. Yes sir.
- Q. Then what?
A. Well, the next thing you do if the vehicle is running is to disengage the clutch then you would push the "PTO" handle forward, that's the handle on the right of the pump on the truck where the transmission goes under it. It's got "PTO" marked on the handle. Then you pull the long handle next to it, which is the long dump bed handle, it's got a bed marked on it also and then you pull the short handle that's up under the drivers seat to the rear and you engage the clutch or let out the clutch and you adjust the speed that you want the bed to dump by the accelerator and, of course, the bed will dump.

- Q. If I wanted to operate the boom crane, how would I go about doing that?
A. Just get in, of course have the truck running, disengage the clutch and push the "PTO" handle forward, engage the clutch, set the idle speed to build a little hydraulic pressure or as fast as you want the crane to operate and get up there to the handle to operate the boom.
- Q. If I understand you correctly, then, there is a significant difference between operating a boom crane and dumping the bed.
A. Yes sir, one handle operates the boom and it takes three handles to operate the bed." (Tr., p. 8)

- Q. And these levers, you stated there are three, or four?
A. Yes sir.
- Q. And they are all marked?
A. The ones to operate the "PTO and the bed, the long handles are. To actually raise the bed after you have all the hydraulic in gear, there's a small handle over under the drivers seat that you pull back that makes fluid go to the cylinder that raises the bed. So, in order to raise the bed, at any time, you have to have that small handle pulled back.

- Q. But they all are marked, is that what you are saying?
A. No, the one under the drivers seat is not marked." (Tr., p. 9).

The transcript of investigation shows the following testimony of Trackman-Driver L. F. Box:

- "Q. Could you, in your own words, relate to us, or to me, what you know about this incident?
A. OK, Ronnie got in the truck...
Q. When you say "Ronnie", you mean Mr. Duckworth?
A. Ron Duckworth.
Q. Alright.
A. We had one more ball and tie left on the truck.
Q. Where was this?
A. Cordova.
Q. At Cordova?
A. Yes sir. And he got in the truck and I was on the passenger side by the corner of the truck...
Q. What were you going to be doing now Mr. Box?
A. I was going to take the ties and set them off, set them off with the cable with the boom...
Q. In other words, you were going to use the boom to handle a load of ties?
A. Yes sir.
Q. OK, what, pick them up and put them in the bed of the truck or what were you going to do?
A. I was going to take them off the truck...
Q. Oh, they were actually on the truck?
A. Yes sir.
Q. OK.
A. And I heard some racket and I looked on the bottom of the bed and I hollared at Ronnie, I said "Ronnie" and he stopped and got out of the truck and I looked on the bottom and I said "Ronnie, something has happened" I believe that's what I said and we got out and saw what had been done.
Q. Well, describe what you saw then.
A. I just saw the frame of the bed was kind of bucked up, you know.
Q. Why was the bed bucked up, the frame?
A. Well, apparently the pins hadn't been removed, you know, from the bed and when it started up, it bent the bed." (Tr. p. 10).

"Q. In other words, let me see if I understand what's going on, Mr. Donald was there prior to unloading and he unloaded a bundle of ties and he left?

A. Right.

Q. And then you unloaded a bundle of ties?

A. Right.

Q. And then he had left the "PTO" handle engaged?

A. It must have been in cause when I fooled with it, or when I got to unload that bundle of ties, it was already in gear, the truck was setting where it had been setting so I didn't have to get inside the truck, I think the truck was already running or all I did was to crank it up one, I might have just had to crank it.

Q. And then you said you had trouble with the boom swinging excessively?

A. Yeah, it went around us.

Q. And that worried you to the point where you said you weren't going to do it anymore?

A. Right.

Q. And what, Mr. Donald offered to unload the next one?

A. No, he was already gone then, I think.

Q. How about Mr. Duckworth then, did he offer to unload the next bundle?

A. Ronnie said he would unload the last bundle.

Q. So what did he do then?

A. He got in the truck to put the "PTO" in gear. Somebody had pulled the truck down, I think somebody had pulled the truck down right there close to the switch, where we were going to unload the ties.

Q. So, in other words, this wasn't the same spot, you were not unloading the third bundle of ties where you unloaded the other two?

A. Right, we had pulled on down and moved the truck out of the way, I believe.

Q. Who did that?

A. I don't remember who pulled the truck down, I sure don't." (Tr., p. 14).

The transcript of investigation shows the following testimony of Special Equipment Operator B. B. Taylor:

"Q. We have had testimony that the crane wasn't working properly, were you aware of this?

A. Yes sir.

- Q. Tell me what was the matter with the crane.
A. It won't handle a load if it's off balance.
- Q. Describe the crane, where is the crane located on the truck?
A. It's located between the cab of the truck and the bed itself and it operates off of a drum which a cable surrounds this drum to turn the boom and the cable slips on the drum which causes the load to give away.
- Q. In other words, the problem you're having is with the cable slipping that swings the boom?
A. Yes sir.
- Q. Were you having difficulty with the hydraulics on the crane?
A. Well, we have had problems with it, yes sir.
- Q. Did you have problems with it that day?
A. I don't remember." (Tr., p. 16).

The transcript of investigation shows the following testimony of Trackman Claimant Ronald Duckworth:

- "...Billy Taylor told me that we needed to get that other bundle of ties off the truck cause he needed the truck to carry the backhoe trailer to Glen Allen so it was left with Larry Box and me there so I told Larry I would try to unload them and I got in the truck, pushed one lever in gear and started out of the truck and it started to make a racket and so I knew something was wrong, you know and I finally got the boom to working and I set the other bundle of ties off.
- Q. So you heard the racket and you went out and saw...
A. Saw what had happened.
- Q. So what did happen?
A. Well the bed started up. See, I wasn't intending on the dump. I wasn't going to dump them, all I was going to do was take the boom and set the ties off and I pulled one lever in there and when I got out the bed was up.
- Q. And did it damage the truck?
A. Yes sir, it bent the rails on the frame.
- Q. And why did it bend the rails on the frame?
A. Undoubtably the pins was in it, or something. The wrong lever was in gear. When I got in the truck, I only pulled one lever. I thought that's all they had was two levers on it." (Tr., p. 19).

Certain conclusions are supported by analysis of the afore-quoted transcript of investigation. Claimant states that it was his intention to unload the bundle of ties by using the boom. The testimony of Trackman-Driver Larry Box, as to his own physical location and anticipation concerning the use of the boom, would corroborate Claimant's statements that he did not intend to dump the ties. This would also support the credibility of Claimant that he pulled only one lever.

There can be little doubt that there were problems with the hydraulics on the crane. The testimony of Mr. Box is corroborated by the testimony of Special Equipment Operator B. B. Taylor. The investigation is silent concerning mechanical examination of the operation of the dump mechanism following the incident.

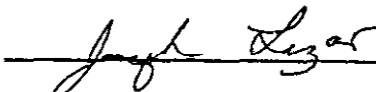
The record suggests that immediately prior to Claimant's attempt to unload the third bundle of ties, the truck was "pulled on down and moved" by some unknown individual. Exactly what operations may have been performed by such unknown individual with respect to the dump mechanism can only be a matter of conjecture in the absence of follow-up in the investigation to the testimony of Mr. Box.

The Board's finding is that the record does not show substantial probative evidence in support of the Carrier's determination that Claimant violated Rules 563, 564, 338, and 379 of the Burlington Northern Railroad Safety Rules and General Rules.

A W A R D

1. The Carrier is in violation of the Agreement.
2. The claim is sustained.

Order: The Carrier shall implement this Award within thirty (30) days of date of Award.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

DATED: OCTOBER 30, 1989