

AWARD NO. 6

DOCKET NO. 279

PUBLIC LAW BOARD NO. 566

Pennsylvania Federation Brotherhood of Maintenance of Way Employees

vs.

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM:

"Appeal of discipline of A. L. Potisek, Engineer Work Equipment, seven (7) days' suspension, account of violation of Safety Rule 3410 (c) resulting in personal injury to G. DeSalvo at 1:50 PM on April 10, 1968, at Millsboro, Pa."

OPINION OF BOARD: Claimant was charged with:

"Violation of Safety Rule 3410 and Safety Rule 3400(c) resulting in personal injury to G. DeSalvo, at 1:50 P.M., on April 10, 1968 at Millsboro, Pa."

After investigation and hearing, Claimant was ultimately suspended for five days.

Claimant, a qualified crane operator, was operating a crawler crane which was situated on a carrier car. Mr. DeSalvo, the foreman, was sitting on the car while Claimant was performing "ditching" work with the crane. The engine crew jerked the train causing the crane to move, and the movement caught the leg of Mr. DeSalvo on the boom cable "tiedowns." The accident resulted in the amputation of the leg.

Carrier contended that the Claimant was disciplined "because he violated Safety Rules 3400(c) and 3410 which was the proximate cause of injury to a fellow employee. The Carrier submits that the Claimant's negligency with respect to the observance of the above-mentioned safety rules had a causal relationship to the injuries received by a fellow employee of the Claimant."

The rules in question are set forth as follows:

"3400. The following shall govern with respect to being on, riding on or performing maintenance or repair work on hoisting equipment, or the car on which it is mounted:

\* \* \*



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(c) The operator must assign such employees a riding location that will permit them to be in his view at all times and also to maintain hand holds. He must be prepared to stop, if necessary to protect them and assure himself that they are off the equipment and car before operating hoisting equipment."

"3410. \* \* \*

"Operating or moving hoisting equipment if any person is in a position that he is likely to be caught by any part of the load or the equipment, or carrying load over workmen, is prohibited."

Carrier, essentially, takes the position that since Claimant operating the boom while Mr. DeSalvo was positioned under the boom and Claimant did not order Mr. DeSalvo off the car, Claimant shared in the responsibility of the injury to Mr. DeSalvo when the train jerked causing the crane to move.

The Board does not agree. Even assuming that the above-quoted safety rules were violated, it is palpably clear that such violation was not the proximate cause of Mr. DeSalvo's injury. The cause of the accident was the jerking motion of the train which in turn propelled the crane back and forth on the carrier car.

Obviously, if Mr. DeSalvo was not on the carrier car, the accident would not have occurred. It also follows that if Mr. DeSalvo had not been working that day, the accident would not have occurred. Basic, well-settled principles of negligence law require a showing of a causal connection between the violation of the rule and the injury, and such connection must be proximate. There is no such showing in this dispute.

AWARD: The claim is sustained, Order date is 30 days from the date of this award.

PUBLIC LAW BOARD NO. 566

/s/ Nicholas H. Zumas

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Nicholas H. Zumas, Chairman

/s/ A. J. Cunningham

/s/ S. J. Wilson

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A. J. Cunningham, Employee Member

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S. J. Wilson, Carrier Member

Signed and dated at Philadelphia, Penna. December 18, 1970