

PUBLIC LAW BOARD NO 5850

Award No. 16

Case No. 16

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to Suspend Southern Region, Machine Operator T. C. Johnson and Truck Driver R. C. Crawford from service for ninety (90) and sixty (60) days was unjust.
2. That the Carrier now rescind their decision and pay for all wage loss as a result of an Investigation held 10.00 A.M., September 20, 1996 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Running through the material yard at Saginaw, Texas, is a high voltage line consisting of three cables, each carrying 7200 volts. On August 20, 1996, the Claimants were assigned to unload a flatbed truck

During the process, the crane boom hit and snapped one cable causing an interruption of

electrical power to the Carrier offices for about a day and one-half.

The truck driver (R. C. Crawford) and the crane operator (T. C. Johnson) were charged with violating various Safety Rules. A timely Investigation was held, following which the crane operator was assessed a 90 day suspension and the truck driver a 60 day suspension.

The main thrust of Carrier's position is that Claimants did not have a complete and/or thorough job safety briefing before commencing their assigned chores as they did not discuss nor even mention the power lines, and secondly, the crane operator failed to have a lookout to warn him when he was nearing the power lines. The lookout cannot be the ground man who is giving signals to the crane operator for the movement of the crane.

Each Claimant must accept some responsibility for what occurred. The truck driver was familiar with the material yard and cognizant of the power lines. It was the crane operator's second day on the job. It is unclear as to his familiarity with the material yards, but nevertheless, the power lines were visible and both the Claimants should have been cognizant of their location and the hazard they represent, but the discipline was excessive. Those responsible for the material yards and the operation thereon also have a responsibility. This they did acknowledge when after the incident but prior to the Investigation, they posted signs banning all crane operations in the material yards. When the Claimants' supervisor assigned the work, his testimony was to the effect that he did not mention the power lines, and further, the supervisor has as much responsibility to know the Rules as do the Claimants, yet he assigned two employees to work near and under power lines with a crane when Rule 60.2.4 clearly requires three people; a groundsman, the crane operator and an observer to watch the boom and the power lines. It also developed Claimant was not familiar with all the Rules he was

charged with violating. In fact, he has never attended a crane safety class.

Although both Claimants work records, spanning twenty plus years, were excellent, this fact, of and by itself does not exempt either Claimant from the discipline process, but it can be a factor in mitigating the discipline. Under the circumstances, the truck driver's discipline of sixty days is reduced to ten days for his failure to discern the hazards of the power lines, and the crane operator's discipline is reduced to twenty days for his failure to observe the power lines and in attempting to maneuver the crane without the complement of groundsmen required by the Rule.

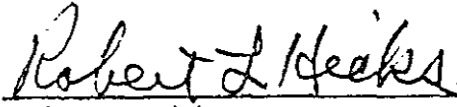
Each Claimant is to be compensated as prescribed by the Rules for time lost in excess of the discipline assessed in this award.

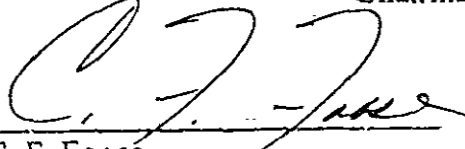
AWARD


Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.


Robert L. Hicks
Chairman and Neutral Member


C. F. Foose
Labor Member


Greg Griffin
Carrier Member

Dated 1/2/97