

PUBLIC LAW BOARD NO. 6314

**AWARD NO. 1
CASE NO. 1**

**PARTIES TO
THE DISPUTE:**

**Brotherhood of Maintenance of Way Employees
vs.**

**Grand Trunk Western Railroad Incorporated
(Former Detroit, Toledo & Ironton Railway Company)**

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: March 30, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The discipline assessed (dismissal reduced to a suspension without pay) Mechanic L. Miller, Jr. for alleged responsibility in connection with the improper use of Crane CN50480 resulting in said crane tipping over at the Flat Rock Yard, Flat Rock Michigan on December 8, 1998 was without just and sufficient cause and based on an unproven charge (Carrier's File 8365-1-664-DTI).
2. As a consequence of the aforesaid violation, Mechanic L. Miller, Jr. shall have his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Although the Organization has advanced several contentions in challenging the discipline in question, it essentially maintains that the voluminous hearing transcript does not satisfy Carrier's burden of proof to demonstrate Claimant's culpability for the crane mishap. Our review of the record requires us to reject these contentions. We find substantial evidence in support of Carrier's determination.

While Claimant discounted his training and expertise on the crane, it is undisputed that he completed the applicable training program. Following the training, which included actual operation of the machine, Claimant verified, with his written signature, that he had been instructed, had reviewed the operator's manual and capacity chart, and that he was "... completely familiar with the machine and its use ..." Moreover, if he truly felt unqualified for the lifting tasks involved, he need not have volunteered

to fill in for the absent regular operator.

The record also is clear that Claimant failed to perform certain steps that were fundamental to the lift and movement of the retarder panel involved. Although Claimant agreed that knowing the radius distance was critical to determining the lifting capacity of the crane, he admitted he did not measure it. In addition, while Claimant admitted that the task qualified as a heavy lift, he did not deploy the outriggers, as required by the operator's manual for all heavy lifts, to provide the lateral stability that circumstances showed was so desperately necessary, regardless of whether the pinion gear broke before or as a result of the tipover.

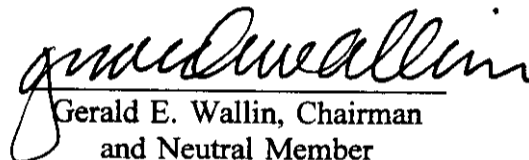
The record also provides substantial evidence in support of the Carrier's determination that Claimant's professed boom angle of 72 degrees was an impossibility. The post-tipover measurements of the retarder panel, when coupled with the physical dimensions of the crane, neither of which changed as a result of the tipover, constitute substantial evidence that the boom angle had to be closer to 50 degrees. At that angle, the weight of the retarder panel was well in excess of the permitted safe lifting capacity.

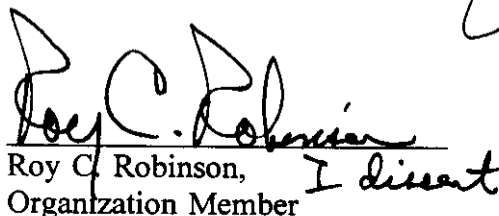
The record also presents a significant inconsistency in the testimony of Claimant and the two foremen present. According to their testimony, Claimant swung the lifted panel in one motion and never stopped because the crane ceased responding to Claimant's efforts to stop the swing. Claimant, on the other hand, clearly described how the panel made contact with the adjacent track so he stopped the swing. He then raised the panel higher and proceeded to swing it farther, all in response to the hand signals of the controlling foreman on the ground. Given the nature of this conflict, the Carrier was not unreasonable in heavily discounting the credibility of the testimony of the three.

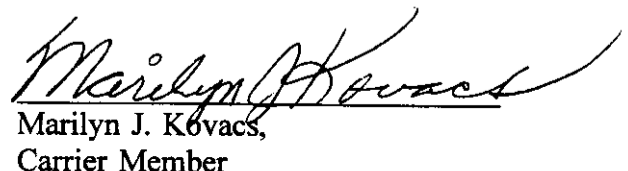
The record permitted Carrier to conclude that Claimant had improperly used the crane as charged. In light of Claimant's indifference to safe operating procedures, when coupled with the nature of the task involved, Carrier was justified in treating Claimant's performance as serious misconduct. We do not find the suspension resulting from Carrier's decision to reinstate Claimant on a leniency basis to have been unreasonable or an abuse of its discretion.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


Roy C. Robinson,
Organization Member *I dissent*


Marilyn J. Kovacs,
Carrier Member