NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6341

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)
	) Case No. 1
and	)
	) Award No. 2
DULUTH, MISSABE AND IRON RANGE RAILROAD COMPANY	)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
M. S. Anderson, Carrier Member

Hearing Date: November 16, 2000

STATEMENT OF CLAIM:

1. The dismissal of Crane Operator T. D. Miller for his alleged violation of crane safety rules on April 11, 2000 was without just and sufficient cause and excessive punishment.

2. Crane Operator T. D. Miller shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Public Law Board No. 6341, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On April 17, 2000, Carrier notified Claimant to report for an investigation on April 27, 2000, concerning his alleged violation of Rules 1, 10, and 12, of the General Rules of Conduct, and Section F, Rule 2, of the Engineering Department Rules of Conduct for alleged negligence and serious safety rule violations in the operation of the X-21 crane at Minntac on April 12, 2000. The hearing was rescheduled to and held on April 25, 2000. On April 27, 2000, Carrier advised Claimant that he had been found guilty of the charges and had been dismissed from service.

The Organization contends that Claimant was not afforded a fair hearing. The

Organization observes that the notice of charges alleged that the incident occurred on April 12, 2000, while the evidence at the hearing focused on April 11, 2000. The Organization also contends that Carrier prejudged Claimant's guilt because it suspended him from service pending the investigation and required that he turn in his keys and clean out his locker. Furthermore, the Organization contends that Carrier failed to prove Claimant's guilt, observing that Claimant testified that he had performed the maneuver routinely in the past and that others were aware of it and did not voice objections. Furthermore, the Organization argues, Claimant was not given any formal instruction on the safe operation of the crane. Finally, the Organization contends that Claimant had over twenty-five years of service and, under the circumstances, the penalty of dismissal was excessive.

Carrier contends that it proved the charges by substantial evidence. Carrier maintains that it afforded Claimant a fair hearing and that Claimant's actions showed such a reckless disregard for safety that dismissal was an appropriate penalty.

The Board has reviewed the record carefully. There is no dispute that, on April 11, 2000, Claimant was operating the crane, that he set the locomotive crane in motion, got off the crane and allowed it to move forward a distance of somewhat more than 1000 feet while he drove a pickup truck, intercepted the crane, reboarded the crane and stopped the crane. We shall consider each of the Organization's arguments in turn.

First, we find that Carrier afforded Claimant a fair and impartial hearing. Due to a typographical error, the notice of charges listed the incident under investigation as having occurred on April 12, 2000, when it actually occurred on April 11. However, there is no evidence that Claimant was prejudiced by the typographical error. Claimant and the Organization clearly were aware of the incident that was under investigation and aware that it occurred on April 11. Claimant and the Organization were not impeded in their ability to prepare and present a defense. They had fair notice of the basis for the charges.

We also find no evidence that Carrier prejudged Claimant's guilt. Claimant was charged with very serious violations of safety rules. Carrier acted appropriately in suspending him from service pending investigation and we see no reason to infer prejudgment from Carrier having Claimant turn in his keys and clean out his locker.

Accordingly, we turn to the evidence relied on by Carrier to support its findings of violations. Claimant admitted that on April 11, 2000, he set in motion a locomotive weighing more than 100 tons, allowed it to run unmanned while he drove ahead in a pickup truck, and intercepted and reboarded the train, bringing it to a stop. The parties dispute the nature and extent of training provided to Claimant in the operation of the crane. That dispute is beside the point. One needs no special training to know that one does not allow a locomotive crane to operate in motion unmanned. Such action is incredibly reckless with potentially disastrous consequences. Something could have happened requiring quick action while Claimant was in the truck and no one would have been at the controls of the crane. Claimant could have stumbled

PLB 6341
Awd 2

when coming down off the crane or when reboarding the crane, resulting in a runaway locomotive. Claimant's actions were utterly lacking in common sense. They were totally inexplicable.

Claimant testified that he had performed this maneuver in the past. However, there is no probative evidence that Carrier condoned Claimant's misconduct. Claimant was able to name only one individual, and did not indicate whether that individual was a Carrier officer. Furthermore, Claimant did not testify that even that individual saw him perform this maneuver. Rather, Claimant stated that he might have seen the maneuver.

The record permits only one conclusion. On April 11, 2000, Claimant operated the crane in an extremely reckless manner that displayed total disregard for safety and common sense. The consequences could have been horrifying and disastrous. Furthermore, Claimant had received a two day suspension and a ten day suspension within the prior year for unsafe operation of machines. We upheld the latter suspension in Case No. 4, Award No. 1. It is unfortunate that these events lead to the dismissal of an employee with more than twenty-five years of service. Claimant's lengthy tenure warrants weighty consideration but it does not immunize him from discipline. In light of the extreme seriousness of Claimant's misconduct and in light of his prior record, Carrier cannot be required to continue Claimant in its employ in any capacity and risk further incident.

AWARD

Claim denied.

Martin H. Malin, Chairman

M. S. Anderson
Carrier Member

D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, January 16, 2001