

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 90
)
) Award No. 64
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
B. W. Hanquist, Carrier Member

Hearing Date: September 14, 2006

STATEMENT OF CLAIM:

1. The Carrier erred when it unjustly dismissed Mr. J. R. Olivier from service for being Careless of the Safety of themselves or others when his front hi-rail failed to raise and also the brakes locked on the opposite end causing the Crane to roll and cause injury to another employee.
2. As a consequence of the violation referred to in Part (1) above, the Claimant should be reinstated to service and be compensated for all time loss while out of service, hotel, meals and mileage while attending the investigation.

FINDINGS:

Public Law Board No. 6402, 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 February 2, 2006, Carrier notified Claimant to report for a formal investigation on February 14, 2006. The notice alleged that Claimant violated Rule 1.6(1) when on January 21, 2006, he failed to raise one end of the Grove crane he was operating at a time to lock the brake system on the opposite end and prevent the crane from rolling without brakes, resulting in injury to another employee and damage to other equipment. The hearing was postponed to and held on February 22, 2006. On March 15, 2006, Carrier notified Claimant that he had been found guilty

of the charge and dismissed from service.

The Organization contends that Claimant was denied a fair and impartial hearing. We are unable to agree. We have carefully reviewed the voluminous record which covers almost 400 pages. We see no evidence of bias on the part of the hearing officer. Indeed, we note that the hearing officer sustained a number of Organization objections during the course of the hearing.

The record reveals that on January 21, 2006, Claimant was operating a Grove 360 crane when he collided with a spiker. The record leaves no question that Claimant raised the front end up but did not retract the rear end all the way to the top. Consequently, the rear rail wheels were not fully extended against the rubber wheels, and, as a result he free-wheeled, that is he had no brakes. This caused the collision.

The Organization introduced evidence of other maintenance issues with the crane, some of which were repaired, but the record is clear that none of these issues would have caused the crane to operate without braking power. Claimant's inability to stop and his collision with the spiker were a direct result of his failure to operate the crane safely and in accordance with explicit safety instructions that were posted on a sticker in the cab of the crane. Carrier proved the charge by substantial evidence.

Claimant had thirty-three years of service. He testified, without contradiction, that he had absolutely no prior discipline. Under these circumstances and without minimizing the seriousness of Claimant's misconduct, we find that the penalty of dismissal was excessive. Claimant shall be returned to service with seniority unimpaired but without compensation for time out of service.

AWARD

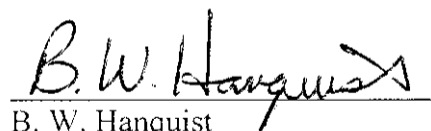
Claim sustained in accordance with the Findings.

ORDER

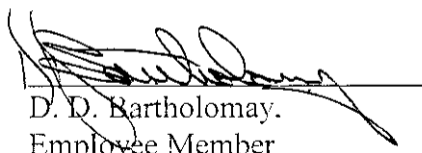
The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto



Martin H. Malin, Chairman



B. W. Hanquist
Carrier Member



D. D. Bartholomay.
Employee Member

Dated at Chicago, Illinois, February 27, 2007