

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 265

Case No. 247-7015

Parties Brotherhood of Maintenance of Way Employees  
to and

Dispute Union Pacific Railroad Company  
(Former MOPAC)

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when Machine Operator K. L. Bryant's personal record was assessed with a sixty-day actual suspension, and in addition thereto Mr. Bryant was disqualified from classification of Machine Operator.

(2) Claimant Bryant should now, therefore, be allowed compensation for time lost from April 8, 1985 until June 7, 1985, and he should be reinstated with all past privileges, vacation and seniority rights unimpaired and his Machine Operator rights restored.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 5, 1959, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, on February 26, 1985, was employed as a Machine Operator at Carrier's "Panel" Yard, in North Little Rock, Arkansas, operating a MK-2 Multi-Crane. As a result of an incident occurring he was notified to attend a formal investigation:

"...place your responsibility, if any, with report about 10:15 p.m. on February 26, 1985, while you were working as Operator on the MKT multi-crane at Panel yard, North Little Rock, handling a switch panel resulted in the MK2 to turn over on its side, resulting in excessive damage to MK2 and also personal injury to yourself. Also, your personal

injury record will be reviewed at this investigation..."

As a result of the investigation held March 21, 1985, Claimant was advised that your record "as this date has been assessed with sixty (60) actual days suspension plus disqualification as Machine Operator on any and all cranes as a result of your responsibility..."

The Carrier's investigation of the incident reflected that the outriggers on the MK-2 crane had not been extended on the far side of the machine permitting the crane to tip over which resulted in some \$60,000 damage to the crane. Claimant's personal injury was not too severe.

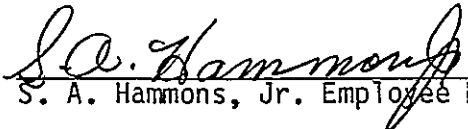
The Union blames the lack of lights in the area of work, on the boom or outside the cab, to shed light on the work being performed as being contributory factors to the incident occurring. They also raised the procedural question that the Carrier did not furnish the *duly accredited representative with a copy of the transcript or notice of the discipline* and that they had to request same after 35 days.

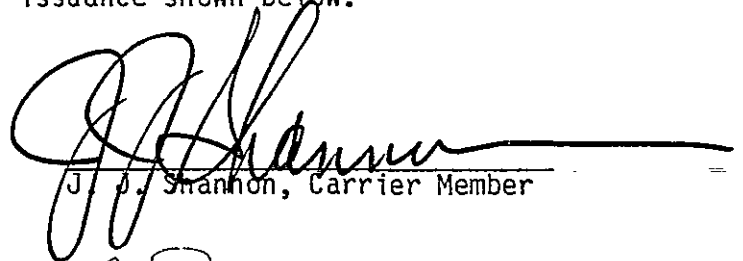
The Board finds no alleged error so egregious as to be cause for reversal of the discipline. Rule 12 does not provide a time within which to furnish a copy of the transcript. Thus, while the copy of the transcript was not furnished until requested such did not violate Rule 12. However, the Carrier is cautioned that a copy of the transcript is a most helpful ingredient for formulation of an appeal. Hence, more caution as to such use must be taken in its distribution to the employee and the duly accredited representative or otherwise, abuses will result in stronger findings of enforcement.


There was sufficient evidence adduced to support Carrier's conclusion that by not placing down the outriggers on the side opposite the side where the load was being placed over extended the boom for two panels. The absence of light could not cure that error. Also, the record reflects that Claimant was not told where to place them, that matter was optional because he had been only told that like panels should be kept together. The Board also concludes that Claimant Machine Operator rights should now be restored.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

  
S. A. Hammons, Jr. Employee Member

  
J. J. Shannon, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued October 20, 1987.