

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 15
Docket No. 15

PARTIES: Brotherhood of Maintenance of Way Employes
TO :
DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
that:

- (1) The dismissal* of Foreman J. A. Hameed for alleged accident involving a Little Giant Crane and a hy-rail truck was without just and sufficient cause, arbitrary and excessive. (Organization File T-2-3610; Carrier File 81-83-42-D).
- (2) The claimant shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

*The Claimant was dismissed from service on December 8, 1982 and returned to service on August 11, 1983 and claim now before the Board is for all monetary loss between those two dates.

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employes and the Carrier involved, are respectively employes and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute herein.

Claimant was a regularly assigned Track Foreman, performing service on Carrier's Tara Sub-Division. He was in charge of a hy-rail vehicle, which he parked on the main line at MP 228 on November 19, 1982, and proceeded to perform service outside of his vehicle and along the right of way at that location. Section laborer E. P. Thielen was working with claimant at the time.

While the claimant and the laborer were performing work at Tara, a Little Giant Crane, shoving a gondola ahead, operated around a curve south of claimant's location and headed north toward where the claimant and laborer were working. When it became apparent that the approaching crane was not going to stop, the laborer working with claimant attempted to flag the vehicle down. The claimant described his actions in a subsequent investigation:

"Realized the Little Giant was still coming, wasn't slowing down so I jumped in the ditch. Start waving. I moved back closer to the track. Start waving trying to get his attention in the mirror. My trackman, Thielen said, 'He's not going to be - he don't see us. He's not going to be able to stop. I ran towards the

"opposite side of the track to get into the truck to drive it forward. While coming across the track to the other side, I slipped on top of the ties, fell, realized that I couldn't get into the truck at that time, so I rolled in the ditch. And at that point he had hit the section truck."

Following the collision between the gondola car being shoved by the crane and the hy-rail truck in charge of claimant, the operator of the crane, the flagman who was riding in the gondola car, and the claimant were notified to attend investigation on November 26, 1982, on the charge:

"Your responsibility in connection with accident at Tara, Iowa, MP 228.0, on November 19, 1982, involving Little Giant Crane and hy-rail truck."

The investigation was postponed and conducted on December 1, 1982. A copy of the transcript of the investigation has been made a part of the record. Following the investigation, claimant was dismissed from service on December 8, 1982. He was subsequently reinstated on August 2, 1982, without prejudice to his right to progress the claim for pay for time lost.

In the course of questioning the claimant in the investigation, the following Rules of the Engineering Department were cited:

- 1062: Employees in charge of hy-rail vehicles will be responsible for their safe operation.
- 1065: Information received concerning movement of trains does not relieve the employe in charge from the responsibility of protecting a hy-rail vehicle against trains, track cars, on track equipment and other hy-rail vehicles.
- 1067: Before movement of hy-rail vehicle is started there must be a thorough understanding as to what part each occupant must take should an emergency arise necessitating prompt action.
- 1077: Hy-rail vehicles must not be left unattended on track. They must be removed from the track or protected by flag when not in use."

Claimant stated that he was familiar with the rules cited.

From our study of the transcript, the Board is convinced that claimant was in violation of the rules cited, particularly Rule 1077. The fact that others involved in the collision may have

had as much, or even perhaps more, responsibility as claimant, may not be used as an excuse by claimant for his violation of the rules. The discipline imposed on claimant, amounting to about eight months suspension, was not arbitrary, capricious, or in bad faith. The claim for pay for time lost by claimant while out of the service will be denied.

A W A R D

Claim denied.

Paul C. Carter
Chairman, Neutral Member

H. G. Hays
Carrier Member

J. D. Crawford
Labor Member.

DATED: 2-16-24