

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 190
Award No. 190

Claimant: M. K. BODINE

PARTIES TO DISPUTE Brotherhood of Maintenance of Way Employees and Union Pacific Railroad Company

STATEMENT OF CLAIM

1. That the Carrier's decision to assess Claimant a written admonishment (Letter of Instruction) was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the Collective Bargaining Agreement.
2. That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to rescind the written admonishment (Letter of Instruction), and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

In a charge letter dated May 17, 1996, the Claimant was notified to be present for a formal Investigation in Tucson, Arizona on May 24, 1996. The hearing was to determine whether or not the Claimant had violated Rules 71.2.19.2 and 72.13.35 of the Chief Engineers Instructions for Maintenance of Way and Engineering, and Rule 1.6 of the Southern Pacific Lines Safety and General Rules, particularly those parts which read:

Rule 71.2.19 ROADWAY MACHINE OPERATORS

They will be held responsible for the safety, care, maintenance and performance of the machines to which they are assigned.

Rule 72.13.35

Operators must keep machines and equipment clean and free of all hazards and must assist in every way possible in maintaining them in safe, operative condition.

Rule 1.6 CONDUCT

Any act of . . . willful disregard . . . affecting the interests of the Company . . . is sufficient cause for dismissal . . .

Indifference to duty, or to the performance of duty, will not be condoned.

The Investigation examined the allegations that the Claimant improperly operated Locomotive Crane SPMW5595 on April 8, 1996. In addition, the Claimant was charged with the failure to maintain the Locomotive Crane and a tool car in a safe, operative condition between the dates of April 8, 1996 and May 3, 1996.

There were several matters which seemed to precipitate the charges. One centered on the fact that while the Claimant was operating the Locomotive Crane on April 8, 1996, the cable became wrapped around the boom shaft. It was tangled so badly that it ultimately had to be removed with a torch. The cable was destroyed in the process. The Claimant's supervisors also became aware of the fact that the platform of the Locomotive Crane was covered with oil and diesel fuel. In addition, the tool car was found to be in disarray with magazines and other items strewn all over the floor area. During this time, the Claimant was seemingly absent without authority for four days.

After reviewing the transcript of the hearing, the Carrier decided that the evidence presented supported the charges that the Claimant had violated Rule 71.2.19 for improperly operating his Locomotive Crane on April 8, 1996. He was issued a Letter of Instruction.

CARRIER'S POSITION

The Carrier argues that the Claimant failed to operate his Locomotive Crane properly on April 8, 1996. Once the boom of the crane created too much slack in his cable, he should have checked to be sure the cable was properly attached to the drum before attempting to rewind it onto the drum. Coincidentally, the cable had to be removed by a torch and was destroyed in the process.

ORGANIZATION'S POSITION

The Organization argues that the information contained in the charge letter was vague with the charges lacking detail. The Claimant was given no specific reasons he was charged with

violating the cited rules.

Furthermore, the Organization argues that man who removed the Claimant from service was not in attendance at the hearing and could not be questioned. These facts violated the Claimant's due process rights.

As to the merits of the case, the Organization claims that it was the Carrier who decided the Crane was operable after the traction motor had been replaced. However, there were other problems with the Crane of which the Claimant, as the Operator, was aware and was in the process of correcting. It was not the Claimant's fault that the malfunctions were not readily reparable. Unfortunately, he was not unable to get to work for several days because his vehicle broke down. The Organization claims that the Claimant worked with the appropriate personnel in attempting to fix the oil/diesel leak, but, even those with the needed expertise could not find the leak. Furthermore, they say, the Claimant made every effort to clean up the spillage, but the leak persisted. However, argues the Organization, absent the leak, the fluid levels of the machine and the condition of its parts clearly indicate that the Claimant maintained his machine properly.

As to the disarray of the tool car, the Organization believes the materials in the car were strewn over the floor area while the car was in transport. They argue that when the Claimant last left the car it was in order.

The Organization urges the Board to clear the Claimant's record since there is insufficient proof that he violated any Carrier rules.

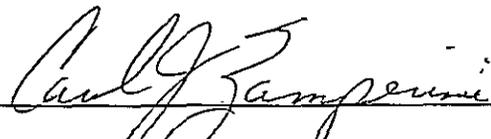
DECISION

The Claimant by his own testimony, has been a Locomotive Crane Engineer on and off for 18 years. He was obviously familiar with his machine and had extensive knowledge on how to operate the crane. The evidence presented at the hearing was sufficient to convince the Board that the Claimant could have handled the situation on April 8, 1996, far more effectively than he did. He was at least in part culpable for the destruction of the cable by his failure to take the necessary steps to be sure the cable was properly attached to the cable drum before he attempted to rewind it.

In reviewing the evidence, the Board believes the Letter of Instruction was appropriate under the circumstances.

AWARD

The claim is denied.



Carol J. Zamperini, Neutral

Submitted this 30th of January, 1998.
Denver, Colorado