

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Case No. 133

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. Claimant Gregory D. Smith's twenty (20) working day suspension, effective December 1, 1989, was unwarranted.
2. The Carrier unjustly took the Claimant's authority and held him responsible for the incident on October 26, 1989, that occurred at the hands of other persons.
3. The Claimant should be compensated for the wage loss; he should be exonerated; and his record expunged.

FINDINGS:

Claimant Gregory D. Smith was employed by the Carrier as a track foreman.

On October 31, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Violation of NRPC Rules of Conduct, Rule D.
Company Policies and Procedures . . .

Violation of NRPC Rules of Conduct, Rule B.
Safety . . .

Specification: On Thursday, October 26, 1989, at approximately 2:45 p.m., equipment under your jurisdiction (per Rule 997 of Amtrak's Operating Rules and Instructions) was not properly secured resulting in injury to two employees.

After one postponement, the hearing took place on November 20, 1989. On December 1, 1989, the Carrier notified the Claimant that he had been found guilty of all charges and was being

assessed discipline of a twenty (20) working day suspension. On December 8, 1989, the Claimant appealed his discipline. The Organization also filed a claim on the Claimant's behalf, challenging his suspension, on January 26, 1990.

The Organization contends that Carrier erred in disciplining the Claimant since he was not the individual responsible for securing the machinery before leaving the job site on October 26, 1989, and that he was not the foreman in charge. The Claimant simply followed orders from his supervisor and left a qualified crane operator at the job site and, thus, did not commit any rule infraction.

The Carrier thereafter denied the appeal on the grounds that although the Claimant was not the operator of the equipment, he did work with it on the date of the incident. The track was out of service in the Claimant's name, and the equipment in question was operated by an employee that the Claimant was responsible for supervising. The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case and we find that there is not sufficient evidence in the record that the Claimant was guilty of violating the Company's safety rules on October 26, 1989. Therefore, the claim will have to be sustained.

There is no question that the Burro Crane was not properly tied down on the date in question. However, it had been operated by an employee by the name of Vendetti and Mr. Vendetti had been required by his supervisor, Mr. Brown, to tie it up. Mr. Brown

also told the Claimant to go to Baltimore for some other type of work. The Burro Crane was clearly not the Claimant's crane and he ~~did~~ not have the responsibility of tying it down on the occasion when it was not properly secured leading to the accident and injuries.

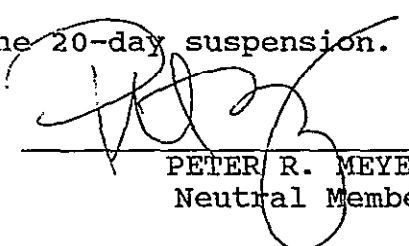
The Claimant knew how to tie down the crane and had tied it down on prior occasions. However, there had been no requirement for him to do the tie up work on the occasion in question.

Although the Claimant was not relieved of his normal responsibilities by Supervisor Brown, this Board cannot find that he had any responsibility for the incident in question since he was far enough removed from using the Burro Crane to have that responsibility shifted to Mr. Vendetti by Mr. Brown.

In order to substantiate discipline issued to an employee, the Carrier must meet its burden of proof that the Claimant was in violation of the rules. The Carrier has not done that in this case and therefore, the claim must be sustained.

AWARD

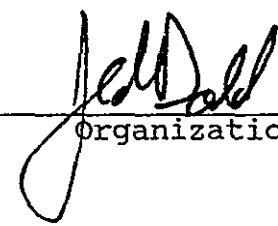
Claim sustained. The discipline shall be removed from the Claimant's record and he should be made whole for all lost income resulting from the 20-day suspension.



PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



Jedd Dadd
Organization Member

Date: _____

8-8-91