

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 16

Docket No. 16

PARTIES:: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: Chicago and North Western Transportation Company

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

- (1) The thirty (30) day suspension and disqualification as Burro Crane Operator assessed Mike Clevenger was without just and sufficient cause, on the basis of an unproven and disproven charge and in violation of the Agreement. (Organization File 3D-3543; Carrier File 81-83-76-D).
- (2) Machine Operator Mike Clevenger shall be allowed the remedy prescribed in Rule 19(d).

FINDINGS:

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

Prior to the occurrence giving rise to the dispute herein, claimant, with about four years of service, was employed as a Burro Crane operator on Carrier's Illinois Division.

On November 23, 1982, while unloading scrap ties at Madison, Illinois, yard, the boom or cable of claimant's crane struck or came in contact with an overhead electric line. On November 24, 1982, claimant and a trackman working with him, were notified to attend an investigation on December 1, 1982, on the charge:

"To determine your responsibility in connection with the Burro Crane striking an overhead wire at Madison Yard at approximately 9:00 A.M. on November 23, 1982 while you were employed on the Illinois Division."

The investigation was conducted as scheduled and on December 8, 1982, claimant was notified of the discipline imposed:

"30 days actual suspension and disqualification as Burro Crane Operator."

A copy of the transcript of the investigation has been made a part of the record.

Rule 1106 of Carrier's Rules of the Engineering Department  
reads:

"1106. In handling cranes or pile drivers, or doing work likely to interfere with overhead wires or other obstructions, every precaution must be taken to prevent damage."

The claimant testified in the investigation:

"Q. While unloading, did the boom of your crane contact a high wire?

A. It was cloudy that day, I'm not real sure it made contact with the wire, all that happened was my indicator gave me a signal, I looked up to the wire and saw an arc, but my boom was not that close to the wire."

The trackman who was working with claimant testified, and claimant so acknowledged, that just a few minutes prior to the incident, he warned claimant that the boom of the crane was close to the electric wire.

On the Form 148, completed at the time of the incident by claimant, and read into the investigation, in describing how the accident occurred, claimant stated:

"Was unloading scrap ties and touched wire with cable, the wind was blowing wire around."

It was established in the investigation that the electrician who inspected the high wire following the incident, stated that it had burned insulation off around the wire.

From our review of the transcript, we find substantial evidence to support the charge against claimant. The record also shows that about two months previously claimant had been disciplined to the extent of thirty days deferred suspension for a similar occurrence. We find no proper basis to interfere with the discipline imposed by the Carrier in the present case.

The Organization raises two procedural arguments which it contends deprived claimant of a fair and impartial hearing: (1) that the officer who conducted the investigation did not render the decision; and (2) that the deciding officer was also the first appeals officer. Both of these contentions have been dealt with

in our Award No. 14, Docket No. 14. We see no necessity for repeating here what was said on these contentions in Award No. 14, except, by reference, to incorporate that portion of Award No. 14 herein.

A W A R D

Claim denied.

Paul C. Carter  
Chairman, Neutral Member

H. D. Harpurs  
Carrier Member

J. D. Crawford  
Labor Member

DATED: 2-16-84.