

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 9/
Docket No. 101

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 thirty (30) day suspension assessed Machine Operator R.D. Shaurette for his alleged responsibility for an Ohio Crane striking and knocking down electrical wires is unwarranted, unjust and must not stand. [Organization File 7D-5159; Carrier File 81-85-108-D]
- (2) Claimant R.D. Shaurette is entitled to the remedy prescribed in Rule 19(d) of the effective Agreement."

FINDINGS:

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

On December 11, 1984, Claimant was operating a crane; the boom of the crane struck electrical wires and damaged both the cables and the poles. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility for Ohio Crane 17-1776 striking and knocking down electrical wires at M.P. 46.9 on the St. James Subdivision at Belle Plaine, MN at approximately 9:30 A.M. on December 11, 1984 while assigned as Machine Operator.

The investigation was held as scheduled, and a copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

The Organization contends that Carrier has failed to meet its burden of proof. The Organization points out that the crane traveled under the same wires one-half hour earlier, with the boom at the same

angle; Claimant therefore had no reason to think that the boom might strike the wires. Moreover, the wires later were replaced at a higher elevation; the Organization asserts that the wires were below regulation level when they were struck. The Organization argues that when discipline is excessive, arbitrary, capricious, or unwarranted, the discipline cannot stand. The Organization therefore contends that the claim should be sustained.

The Carrier argues that the charges against Claimant were proven, and the assessed discipline was warranted. Carrier points out that because the wires were knocked down, it is obvious that Claimant did not make sure that there was adequate clearance for the crane and the boom. Moreover, if the boom is not secured, it is possible that the boom will bounce as the crane moves. Carrier contends that it was reasonable for it to conclude that Claimant was negligent in the performance of his duties. The assessed discipline was not arbitrary or unreasonable, and the claim should be denied in its entirety.

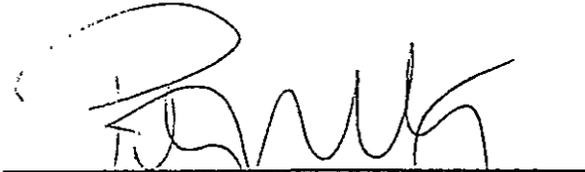
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of being responsible for the crane accident on December 11, 1984. The Claimant was the individual in charge of making sure that the boom was secure and not in a position to collide with anything, including overhead wires. Although the Claimant contends that it had cleared once before and he did not feel that it was necessary to secure the boom on the way back, the fact remains that the crane was his responsibility and he should have taken whatever precautions were necessary to make sure that the crane would not come into contact with the overhead wires. He did not, and he was properly found guilty of being responsible for the

accident.

Once this Board has determined that a claimant was properly found guilty, we next turn our attention to the type of discipline imposed. In this case, the Claimant received a 30-day suspension for his wrongdoing. This Board will not set aside a carrier's imposition of discipline unless we find it to be unreasonable, arbitrary, or capricious. In this case, we see no reason to set aside the discipline.

Award:

Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: October 22, 1987