

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 97
Docket No. 109

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 deferred suspension assessed Machine Operator J.J. Mulvaney for alleged failure to operate a Little Giant Crane in a safe manner is unjust, improper and based on an unproven charge. [Organization File 2D-5120; Carrier File 81-85-95-D]
- (2) Claimant J.J. Mulvaney shall be allowed 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 November 4, 1984, Claimant was working as a temporary Little Giant Crane operator. While Claimant operated the crane, the boom cable was damaged, requiring replacement. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility for failure to perform your duties in a safe manner, resulting in damage to Little Giant Crane 17-2879, while employed on Job Number 903, Machine Operator, Des Moines, Iowa, Shortline Yard, on November 4, 1984.

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. Claimant testified that the damage occurred when the cable popped out of the pulley groove; Carrier witnesses stated that

the damage was caused by the improper hook-up of the magnet, but neither of them observed the crane in operation on the day in question. One Carrier witness stated that the bolt was missing and might have vibrated loose after the cable was installed two days before the day in question. The Organization asserts that the damage was caused by a mechanical problem; Claimant cannot be held responsible for unforeseeable mechanical failures. The Organization therefore contends that the claim should be sustained.

The Carrier argues that the charge against Claimant was proven, and the assessed discipline was warranted. Carrier contends that there is substantial evidence in the record showing that Claimant was responsible for the damage to the cable; it was reasonable for Carrier to conclude that Claimant had failed to tie down the sheave block, causing the cable to twist and rub. Carrier asserts that the missing bolt apparently did not cause the damage. Carrier argues that under the circumstances, the assessed discipline was neither arbitrary nor unreasonable, and the claim should be denied in its entirety.

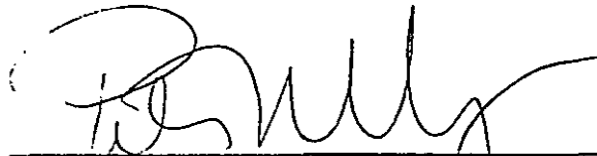
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offense with which he was charged. The Claimant had the responsibility of operating the crane in a safe manner. Part of that responsibility involves making sure that the crane is operating properly before commencing an operation. The Claimant was the crane operator and failed in his responsibilities. Hence, he was properly found guilty.

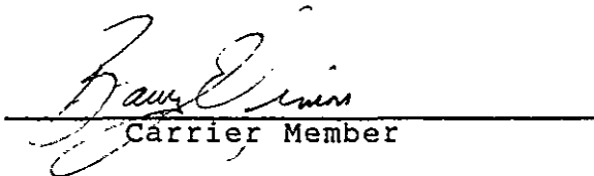
Once this Board has determined that a claimant has been properly found guilty of the charges against him, we next turn our attention to the type of discipline imposed. In this case, the Claimant received a

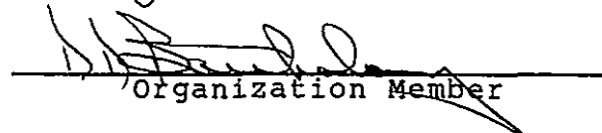
30-day deferred suspension for his wrongdoing. We see nothing unreasonable, arbitrary, or capricious with that discipline and we will not set it aside.

Award:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: October 22, 1987