

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

Case No. 131

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. Claimant Mark S. Vendetti's thirty (30) working day suspension, effective December 1, 1989, was unwarranted.
2. The Carrier disciplined the Claimant solely because there was an accident. The Claimant cannot be held responsible for the actions of others.
3. The Carrier failed to prove the Claimant's negligence and violation of Carrier rules.
4. The Claimant must be exonerated of the charges. He must be made whole in terms of lost compensation. This matter must be expunged from his record.

FINDINGS:

Claimant Mark S. Vendetti was employed by the Carrier as an engineer.

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, you failed to properly secure Burro Crane N58828, per Amtrak Safety Rule and Instruction 4208, resulting in personal injury to two employees at approximately 2:45 p.m. on that date.

The hearing took place on November 17, 1989. On December 1, 1989, the Carrier notified the Claimant that he had been found

guilty of all charges and was assessed discipline of a thirty (30) working day suspension. On December 8, 1989, the Claimant appeared his discipline.

The Carrier thereafter reaffirmed its decision on the grounds that the Claimant was the operator of the Burro Crane in question on the day of the incident, October 26, 1989, and was responsible to properly tie down the equipment at the end of his tour of duty. The Carrier asserts that the Claimant's failure to do so resulted in serious injuries to fellow employees and led to the Claimant's violation of the Carrier's Safety Rules and Instructions. The Carrier indicated that all time held out of service would apply to the Claimant's suspension.

The Organization filed a claim on the Claimant's behalf, challenging his suspension. The Organization asserts that the Claimant followed all Carrier procedures in securing the crane in question and that the Carrier erred in disciplining the Claimant for the actions of others after he left the job site. The Organization contends, therefore, that the Carrier failed to prove the Claimant's negligence. 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 sufficient evidence in the record to support the finding that the Claimant was guilty of violating Rules of Conduct D and B when he failed to properly secure the Burro Crane on October 26, 1989. The Burro Crane subsequently escaped and injured two employees. The record reveals that it was clearly the Claimant's responsibility and he did not properly

perform his duty.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious.

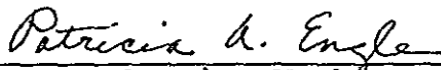
In the case at hand, the Claimant was guilty of violating safety regulations. The records reveals that in 1982 he received a 30-day suspension for a safety violation. Given the nature of the offense in this case and the Claimant's previous record, this Board cannot find that the Carrier's action in imposing a 30-day suspension on the Claimant was unreasonable. Therefore, the claim will be denied.

AWARD

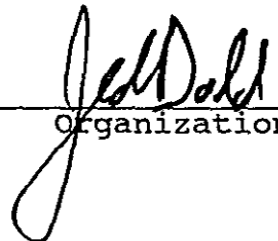
Claim denied.



PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



Jedd Dahl
Organization Member

Date: 8-8-91