

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24340
Docket Number XV-24333

Joseph A. Sickles, Referee

[Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(Burlington Northern Railroad Company
(former St. Louis-San Francisco Railway Company)

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

(1) The seven(7) days of suspension imposed upon Machine Operator H. W. Maxey for alleged violation of 'Rule 176' and 'Rule 226' was without just and sufficient cause, unwarranted and on the basis of unproven charges (System File B-1709)

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant was suspended and was notified to report to an Investigation concerning an alleged "negligence or indifference" to duty. Subsequent to the Investigation the Employee was restored to service but did not receive payment for time lost during the suspension which essentially amounted to seven (7) days.

At the investigation the Claimant conceded that the tamper that he was operating did collide with another tamper however he stated that he was unable to stop his machine because the brakes failed when "...the shadow board fell down and became wedged between the brake and the clutch pedals."

Of significance to our consideration however is the testimony from the Claimant that although the "shadow box" was in an improper place and wasn't designed to ride where it had been placed it "...fell down from the place that I put it."

We have ruled on numerous occasions and we repeat herein that it is not incumbent upon us to substitute our judgment for that of the Carrier in disputes such as this nor is it appropriate for us to make credibility determinations in this type of procedure.

There is evidence of record sufficient for us to determine that the Carrier had a basis for its action and accordingly we will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AW A RD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of April 1983.

