

Award No. 13128

Docket No. MW-14461

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Daniel Kornblum, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

NORFOLK AND WESTERN RAILWAY COMPANY

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

(1) The Carrier's dismissal of Roadway Machine Laborer Ollie W. Stephenson was without just and sufficient cause, was wholly disproportionate to the charges placed against him and completely in disregard to his previous long and unblemished record of service with this carrier.

(2) That Mr. Ollie W. Stephenson be restored to service with vacation, seniority and all other rights unimpaired and that he be paid for the assigned working hours actually lost, less the amount earned while out of service. (Carrier's File M-1488)

OPINION OF BOARD: This is a discipline case involving the dismissal from Carrier's service of Roadway Machine Laborer who had been in continuous service from September 8, 1947.

The record shows that on May 23, 1962, the Claimant was working as Roadway Machine Laborer with Utility Grinder No. 16092 being operated by Roadway Machine Operator Everette Booth. At about 10:35 A. M. on that date the machine was on the rails being used by Operator Booth in the process of grinding a joint. Operator Booth was between the rails operating the machine, and Claimant was standing on the end of the ties, south of the south rail, observing the operation of the machine. He failed to detect and warn Operator Booth of an approaching westbound train in time to prevent a collision, with result that the train struck Operator Booth and the machine, injuring Booth and demolishing the machine.

Claimant was removed from service effective at 7:00 A. M., on May 24, 1962, for "neglect of duty for violation of Rule 1301, Book of Safety Rules." He requested and was accorded a formal investigation in accordance with the terms of the applicable Agreement, and on June 15, 1962, he was notified of his dismissal from the service.

The transcript of the investigation has been reviewed and, in our opinion, the investigation was properly conducted. The investigation shows that one of the primary duties of the Roadway Machine Laborer was to watch for trains while the Operator was engaged in grinding work. The Claimant admitted that

he failed to watch out for the train, but contends that, at the direction of his superior, he was keeping his eyes on the machine to observe and warn the Operator of the danger of the fiber wheel loosening up, some make-shift repairs having been made to prevent the fiber wheel from coming loose.

Based upon the entire record in the case the Board is of the opinion that Claimant was negligent in the performance of his duties, but in view of his years of service, with no showing of prior discipline, and in view of the particular and extenuating circumstances under which the accident occurred, the imposition of the extreme penalty of dismissal was too severe. We, therefore, find and hold that Claimant should be restored to service with seniority and other rights unimpaired, but without any compensation for time while out of service.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated to the extent that the penalty imposed was too severe.

AWARD

Claim sustained to extent shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1964.