

PUBLIC LAW BOARD NO. 1760

Award No. 13

Docket No. MW-STL-77-5

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: Carrier violated the effective Agreement when they assessed Keith G. Glenn 5 days actual suspension for violation of Safety Rules 1051 and 1175 on unproven charges as a result of an investigation held on September 23, 1977. Mr. Glenn shall be paid for all time held out of service due to charges not being sustained and that this investigation be stricken from his record.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant had been employed as a Section Laborer since August 26, 1974. While removing ties at Granite City, Illinois, on August 29, 1977, Claimant suffered an on-duty injury. On September 7, 1977, when Claimant was not able to work due to such injury he was given a five day suspension.

The Local Chairman, on September 16, 1977, requested a hearing for Claimant. It was granted and Claimant was notified to attend a formal investigation for being in violation of company safety rules on August 29, 1977. He was notified that the investigation would be held September 23, 1977:

"concerning your being in violation of Company Safety Rules Numbers 1051 and 1172 on August 29, 1977 at Mile Post 479 while removing cross ties from 4 track at Granite City with tie tongs. Safety rules 1051 and 1172 read as follows:

Safety Rule 1051:

'Employees on or about tracks must be alert, watchful and keep out of danger, exercising care to avoid injury to themselves and others. Nothing in these rules is to be construed as relieving any employee from performing his full duty in this respect.'

Safety Rule 1172:

'Do not attempt to lift beyond your normal physical strength. Avoid sudden movements or twisted positions and obtain help to move heavy or cumbersome objects. When lifting, have secure footing, bend knees, keep back erect and maintain a firm grip on the object. When two or more people are lifting, designate one person to give signals.'"

Following the hearing, Claimant was advised:

"You are hereby notified that the five (5) days disciplinary action assessed is hereby sustained and will be so shown on your record."

Despite Carrier specifically charging Claimant with violation of two (2) Rules the Hearing Officer acted otherwise. He insisted in attempting to bring other rules into the picture such as Rule 400. Further, he reflected a pre-conceived conclusion that because Claimant's tie dogs slipped off that Claimant had thereby violated Safety Rule 1051.

The Section Foreman who was overseeing Claimant's work, testified that Claimant had exercised care to avoid injury and that he had square footing.

The Board finds that there was insufficient evidence adduced to support the conclusion reached by Carrier and that it failed to carry the required burden of proof. In the particular circumstances, this claim will be sustained.

Award: Claim sustained.

Order: Carrier is directed to make this Award effective within  
30 days of date of issuance shown below.

M. A. Christie  
M. A. Christie, Employee Member

G. C. Edwards  
G. C. Edwards, Carrier Member

Arthur T. Van Wart  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Falmouth, Massachusetts, May 31, 1979.