

PUBLIC LAW BOARD NO. 1760

Award No. 136

Docket No. 136

Carrier File MW-DECR-91-34-BB-254

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railroad Company
 (former Wabash)

Statement

of Claim: Claim on behalf of R. D. Walters who was dismissed August 23, 1991 for failure to perform his duties as a flagman at Bridge S21.4, Bridgeton, Missouri, on July 17, 1991.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board for that purpose.

The Claimant, R. D. Walters, a B&B Carpenter, on July 17, 1991 was sent to St. Charles to provide Flagman's duties there because a contractor was driving piling around the pedestal at the bottom of the St. Charles Bridge. The Claimant reported before 7:00 AM. He went on duty thereat and a freight train passed over the St. Charles Bridge at approximately 9:00 AM. About noon, an Assistant Track Supervisor, who was patrolling the track at that time, observed that the track on the bridge was significantly out of line. Said Supervisor caused a 10 MPH slow order to be placed on the bridge, thereby reducing the normal track speed from 30 MPH to 10 MPH until the condition could be corrected.

A later determination provided a conclusion that the pile driving around the pedestal had caused it to settle and the tracks above to come out of level and alignment. The deviation thereof was 3/4 of an inch. It was so obvious that it was believed that the Claimant should have observed same.

Claimant was notified to attend a formal investigation to determine his failure to perform duties as a Flagman at Bridge S21.4, Bridgeton, Missouri. As a result thereof, Carrier concluded that he was culpable of the charge placed against him. The Claimant was dismissed from service as discipline therefor.

The record reflects that the Carrier chose to accept the testimony of its witnesses in opposition to that of the Claimant. No abuse of discretion was shown. The Carrier

chose, as was its right, to resolve the conflicts in the testimony. Again, no abuse of such right was shown.


The Board concludes that there was sufficient evidence adduced to support Carrier's conclusion of the Claimant's culpability. The Claimant is a qualified Flagman. He passed the FRA qualifying test in 1991. The Claimant took the Book of Rules. He holds seniority with his employers as a B&B (Building and Bridge) Carpenter.


B&B Supervisor D. W. Drake, who preferred the charges against the Claimant testified that the Claimant's duties were to protect the interest of the Carrier and to allow for the safe passage of train. The Claimant clearly failed therein because after noticing the alignment defect he failed to report it to proper authorities. Several days after the July 17 incident the Claimant told Supervisor Drake that he noticed the alignment defects but that the Track Rider was coming soon and that he would wait for him to take a look at it. Track Supervisor (Track Rider) Bridgeford came about noon time and discovered that the track was 3/4 inch out of alignment. He instituted corrective protective action by placing a slow order on the bridge. The bridge is a mile long and is most vital to the Carrier's operation. The record also reflects that the freight train involved went over at the normal 30 MPH track speed about 9:00 AM. The bridge involved is 43 feet high. It is some 35 feet from the rail to pedestal which is low. The pedestal involved at vent 5 is located some 250 feet from the east end of said St. Charles Bridge. Claimant who did come to the top where the bridge was located did so only because of the difficulty in transmitting on his radio.

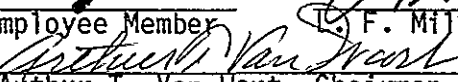
Whether the claimant should have spent all of his time at the bottom or all his time at the top is not passed on. Clearly the facts, the circumstances and safety indicate that it would have been more prudent to have spent time at least in both locations as it only took 7 or 8 minutes to go from the bottom to the top.

The discipline when viewed in light of the offense and the circumstances involved and the Claimant's past service record which indicated a previous dismissal for violation of safety and general rules is deemed not unreasonable. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


L. F. Miller, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member