

PUBLIC LAW BOARD NO. 1760

Award No. 144

Case No. 144

File No. MW-DECR-92-35

Parties Brotherhood of Maintenance of Way Employes
to and
Dispute Norfolk and Western Railway Company
(former Wabash)

Statement
of Claim: C. I. Cox-Dismissal - False statements about injury and
unsafe work practice.

Findings: The Board has jurisdiction by reason of the parties
Agreement establishing this Board therefor.

The Claimant, Carpenter Charles I. Cox, was dismissed
from Carrier's service on the charge:

"...with giving false statements regarding how your injury
occurred on July 7, 1992 when you suffered burns on your arm
and also charged with engaging in an unsafe work practice in
that you removed the radiator cap to Crane RC8103LG without
sufficiently permitting the pressure to be exhausted as
required by Safety and General Conduct Rule 1010."

Rule 1010 reads:

"Before uncoupling a connection or removing valves, caps,
plugs or other parts from steam boilers, reservoirs, tanks
or other pressure vessels, the relief valve must be opened
and the pressure completely exhausted."

The Claimant Crane Operator, while operating his crane,
hooked onto some overhanging tree limbs. It flipped open
the engine compartment thereby allowing the filter to ingest
some leaves. The crane lost power and began to overheat.
The Operator put the crane in the clear and swung the cab to
the side so that it was perpendicular to the deck. The
Claimant noticed some water leaking and sent his co-worker
to the depot for more water. While alone he opened the hood
covering the radiator and was burned by hot fluid spurting
from the radiator. The Claimant asserted that when he
pushed opened the hood with his right arm that the radiator
cap blew off resulting in the hot fluid striking his arms.
The Carrier believed, after testing, that the radiator cap
or fill neck did not suggest any evidence of damage to
support the proposition alleged by Claimant that the cap
simply blew off. The Carrier believed that the Claimant,
more, probably than not, had not turned the cap one notch to

commence to exhaust the pressure. Rather he had simply turned the cap fully and it blew off thereby permitting hot radiator fluid to spew out causing the burn on his arm.

The Claimant was accorded the due process to which entitled under his discipline rule.

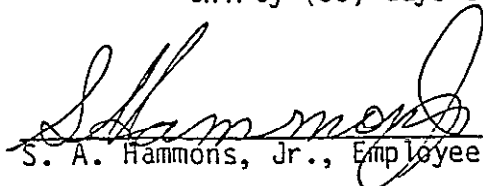
There was sufficient evidence adduced, albeit circumstantial but probative, to support the Carrier's conclusion that the Claimant contrary to Safety Rule 1010, had taken an unsafe approach to removing the radiator pressure cap thereby causing the burn on his arms rather than the coincidental assertion that the radiator cap blew off. Compounding the problem was Claimant's false statements to his supervisor regarding how the injury occurred.

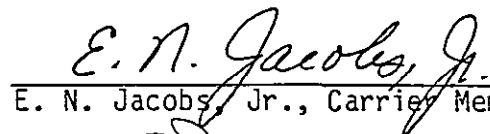
Claimant's service record indicates that he has been involved in some 15 incidents involving safety violations or injury incidents since 1979 for which he received only two verbal reprimands, two letters of warning and three counseling letters.

Notwithstanding the letters above, the Board will give him a last chance opportunity to demonstrate his ability to work safely. He will be conditionally reinstated to service with all rights unimpaired but without pay for all time lost subject to his first passing the necessary return to work physical examination. Thereafter, a review of his safety record with a qualified Carrier representative and with his Union representative, if possible, so that the Claimant can clearly understand the significance of the violations and their impact on his work habits in order that improvement thereon may be demonstrated.

Award: Claim disposed of as per findings.

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


S. A. Hammons, Jr., Employee Member


E. N. Jacobs, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member