

PUBLIC LAW BOARD NO. 1760

Award No. 23

Docket No. MW-MOB-75-30

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company *Western Region*

Statement of Claim 1. Carrier violated the effective Agreement when Foreman Track Inspector R. W. Myers was assessed five (5) days actual suspension after Carrier failed to allow him a fair and impartial hearing.
2. Any time assessed Claimant R. W. Myers be dropped and the hearing 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, in November 1975 was employed as a Foreman Track Inspector. As a result of an incident occurring on November 6, 1975 he was notified, under date of November 26, 1975, by the Division Engineer - Maintenance

"...to report to the office of Division Engineer - Maintenance...at Moberly, Missouri at 9:00 A.M., December 3, 1975 for a hearing to determine your responsibility in connection with NW Vehicle 4085 driven by you striking parked automobile, a 1966 Olds 88, owned by Ellis Lindsey, 1117 Lakeview, Columbia, Missouri, at Boone County Power & Light Plant, Columbia, Missouri, approximately 10:50 A.M., November 6, 1975."

The hearing was held as scheduled and thereafter, he was advised in part:

"The facts as determined in this hearing clearly indicated you were negligent in parking vehicle 4085 and for this negligence, you are hereby assessed five (5) days actual suspension from the service of the Norfolk and Western Railway Company."

The Board finds that Claimant was given a fair and impartial hearing pursuant to Rule 20.

There was sufficient evidence adduced to support Carrier's conclusion that Claimant was responsible in connection with the charges preferred against him. The record reflects that he had driven the N&W truck to the road crossing of the Power plant, that he parked the truck on a slight incline on the road crossing, that he said that he placed the truck in fourth gear and allegedly set the emergency brake. After he left the truck parked and unattended and some ten or fifteen minutes thereafter it rolled down the incline striking the parked vehicle. Claimant's testimony that he tested the emergency brake after the accident and found it to be operating properly appears damaging to his innocence. If the brake worked properly after the accident it surely should have worked before the accident occurred. Thus the presumption casts doubt on whether Claimant's testimony was credible that he had, in fact, put the emergency

brake on.

We find that the discipline assessed was in the circumstances reasonable.

Award Claim denied.

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

E. N. Jacobs
E. N. Jacobs, Carrier Member

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