

PUBLIC LAW BOARD NO. 1760

Award No. 54

Case No. 54

Docket No. MW-DEC-83-6

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement

of Claim: 1. Carrier violated the effective agreement when Section Laborer Roosevelt H. Comage was unjustly assessed thirty (30) days actual suspension beginning March 3 through April 1, 1983.

2. Claimant Comage shall now be paid at the respective rate of laborer and any overtime that was worked during the period which he was out of service due to Carrier not sustaining their charges and that this investigation be stricken from Mr. Comage's 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, a Section Laborer, working in Carrier's Decatur yard on January 10, 1983 received an alleged on duty injury. Claimant was notified to attend a formal investigation under date of January 17, 1983 on the charge:

"To determine your responsibility, if any, in connection with your alleged injury at Decatur, Illinois at approximately 10:15 AM on January 10, 1983 and your responsibility, if any, in connection with Safety Rule D and Safety Rule 1161C of the Norfolk and Western Railway Company Safety Rules and Rules for General Conduct effective March 1, 1981...."

As a result thereof, Carrier found Claimant culpable and assessed thirty (30) days actual suspension as discipline therefor.

The Safety Rules involved read:

"D. Service demands the efficient, intelligent, and safe discharge of duty. It is the duty of all employees to exercise care to avoid injury to themselves and others."

Safety Rule 1161(c):

"Avoid freight or material falling on hands or feet."

The incident occurred when Claimant was injured while working with a gang laying rail with a front end loader at the IT curb switch at approximately 10:15 AM on January 10, 1983, when laying a rail, a piece of rail hooked to the end loader by the Claimant, hit Claimant's left foot. Claimant was in the process of unhooking the rail dog off the front loader when the Operator of the wheel touched the rail and caused the end of it to shift slightly. That slight movement pushed against Claimant's foot resulting in the injury thereto.

It would appear that Carrier's conclusions would make the employee the assurer against an accident occurring. The record is not that clear that Claimant had caused or seriously contributed to the incident. In such circumstances it creates such doubt as should redound to Claimant's benefit. Therefore, in such circumstances, the discipline will be modified and reduced to ten (10) days.

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.

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

S. C. Lyons  
S. C. Lyons, Carrier Member

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