

PUBLIC LAW BOARD NO. 1760

Award No. 82

Case No. 82

Docket No. MW-MOB-79-54

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company
(Former Wabash)

Statement

of Claim: Claim on behalf of W. O. Buckman for pay for time lost due to a five-day actual suspension assessed as a result of a formal investigation held February 28, 1986.

Findings: The Board has jurisdiction of this case.

Claimant, a Bridge and Building Carpenter on Gang 257, on February 7, 1986, used a track jack to straighten a curled bumper on a Carrier two ton truck, NW truck 6776. After the bumper was straightened and while in the process of releasing the jack the head thereof shot back into the housing section catching the area between Claimant's left thumb and index finger, between the head of the jack and the top of its housing causing a wound which required 7 stitches to close.

As a result of a formal investigation, Carrier found him culpable of the charges against him and assessed the discipline here appealed.

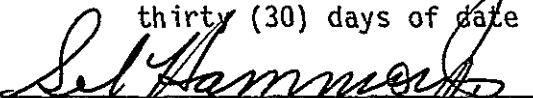
Claimant was accorded a fair hearing. Objections as to the conduct of the hearing must be raised timely at the hearing and not subsequently.

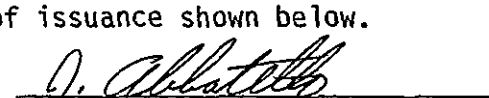
There was sufficient evidence adduced to support Carrier's conclusion that Claimant had used the jack improperly and thus suffered the injury. However, all the rules cited were not violated.

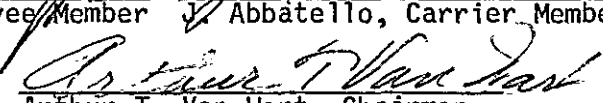
The discipline appears to be excessive when the interest demonstrated by the Employee was an interest to care for Carrier's equipment and a reprimand in those circumstances would have been more appropriate.

Award: Discipline modified to a reprimand.

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


Sol Hammons, Jr., Employee Member


J. Abbate, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member