

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
NORFOLK & WESTERN RAILWAY COMPANY

Case No. 65

Dispute - Claim of the System Committee that:

1. The dismissal of Machine Operator B. A. Tatum for allegedly leaving a tie inserter unattended and unprotected from train movement without just and sufficient cause, on the basis of unproven and disproven charges, arbitrary and in violation of the Agreement. (File MW-MUN-82-58)
2. Claimant B. A. Tatum shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

Findings:

Claimant B.A. Tatum was employed by Carrier and was regularly assigned as a tie inserter operator and was performing service as such in Lima Yards, Lima, Ohio. On August 25, 1988, Claimant was directed to attend a formal investigation:

to determine your responsibility in connection with your violation of NS Operating Rule 822 at Lima, Ohio, on August 9, 1988, in that you left your assigned Tie Inserter TRI 8303 unattended and unprotected from train movement, on a track in service.

The hearing took place on September 29, 1988, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the Record to support the finding that the Claimant was guilty of the offense of leaving his tie inserter unattended and unlocked on an active track when he went to lunch. The machine should have been left secured and locked.

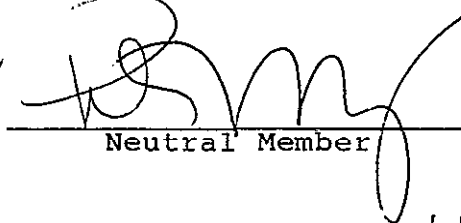
Once this Board has determined that there is sufficient evidence in the Record to support the guilty finding, we next turn our

attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find the Carrier's action to have been unreasonable, arbitrary or capricious.

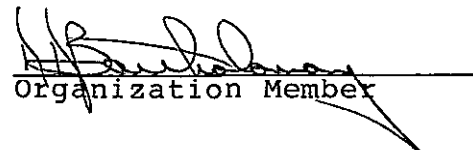
In the case at hand the Claimant was terminated from employment for his wrongdoing. Although this Board has found that he was clearly guilty of the serious wrongdoing, this Board finds that the Carrier's action in terminating the employment of the Claimant who has worked successfully for the Carrier for over 16 years was unreasonable and arbitrary. Therefore, this Board hereby finds that the dismissal be reduced to a lengthy suspension and that the Claimant be returned to work effective September 10, 1989, without any back pay. That suspension of nearly one year is certainly a more reasonable penalty in response to the wrongdoing of the Claimant.

Award

Claim sustained in part. The dismissal of the Claimant is hereby reduced to a suspension without pay, terminating September 10, 1989. The Claimant is to be returned to work as of that date.


Neutral Member


Carrier Member


Organization Member

Date: 3-28-90