

PUBLIC LAW BOARD NO. 1838

Award No. 6

Case No. MW-P0-75-4

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement of Claim: 1. Carrier violated the effective Agreement by unfairly and unjustly suspending Claimant Timothy Patton, Machine Operator, for a period of seven (7) days.

2. Claimant Patton be paid for the seven (7) days he was suspended from July 23, to July 30, 1975 and that the matter be stricken from his record.

Findings: The Board finds, after hearing upon the whole record and all evidence 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 March 1, 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 Machine Operator with one and one-half years of service, received a seven (7) day suspension for violation of Safety Rules "A", "H" and 1271 in connection with derailment and damage to Tamper NW11259. He was held at fault for not having inserted a safety pin in the left jack cylinder in order to secure same because said jack cylinder dropped down on the circle rail while Claimant was moving the Tamper machine in the clear on the night in question causing the tamping jack to shear off and derail the machine. Said Rules read:

"General Notice - Rule "A"
Safety is of the first importance in the discharge of duty."

"General Notice - Rule "H"
Employees who persist in unsafe practices to the jeopardy of themselves

and others will be subject to discipline, even if their conduct violates no specific rule."

"Rule 1271

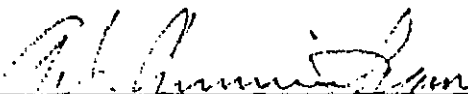
Machine Operators shall be responsible for the daily inspection, proper maintenance and lubrication of roadway machinery to which they are assigned."

The Claimant was given a fair and impartial hearing. The transcript thereof provided sufficient credible and probative evidence to support Carrier's conclusion as to Claimant's failure to properly protect the Machine assigned to him. The Board finds nothing in the record to cause it to interfere with the reasonable discipline imposed.


In the circumstances this claim will be denied.

Award:

Claim denied.


A. J. Cunningham, Employee, Member


G. C. Edwards, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, May 1, 1978.