

PUBLIC LAW BOARD NUMBER 3530

Award Number: 30
Case Number: 30

PARTIES TO DISPUTE

NORFOLK AND WESTERN RAILWAY COMPANY

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM

Claim of T.W. Collins for pay for five days with vacation and seniority rights unimpaired.

FINDINGS

This dispute involves the conduct of the Claimant, a Laborer on May 18, 1983. The Claimant was notified on May 20, 1983 that he had been suspended for five days for his violation of Safety Rule 1161(c). An investigation was conducted on June 9, 1983 to determine if the Claimant was guilty of this violation.

At the hearing, the Claimant testified that he injured himself while recovering a steel rail jack from a truck. The Claimant stated that he climbed into the truck moved the 50-pound jack to the rear, stepped out of the truck,

and then attempted to remove the jack with one hand. He admitted that he knew the jack was heavy and that it had a small smooth handle. But, he also stated that when he removed the jack from the truck, it was heavier than he thought, and because the handle was small, the jack slipped from his hands, landed on, and broke his foot.

Mr. Self, Roadmaster, testified that the handle was only big enough to be held with one hand. He also stated that the Claimant should have used two hands in moving the jack, one on the handle and one elsewhere on the jack. Mr. Self also testified that the five-day suspension was assessed because the Claimant had been negligent.

On June 28, 1983, the Claimant was notified that his five-day suspension had been upheld. The Organization filed a claim on his behalf on July 26, 1983. After a series of appeals, the Claimant was denied by Mr. Steele, Assistant Vice President - Labor Relations on December 16, 1983.

The issue in this dispute is whether the Claimant's five-day suspension was for just cause.

The position of the Organization is that the Carrier failed to prove that the Claimant was guilty of violating the safety rules. The Organization points

out that Mr. Self, the only witness testifying against the Claimant, was not present when the incident occurred. The Organization also argued that the discipline was excessive.

The position of the Carrier is that the Claimant received a fair investigation, during which it was shown that he violated the safety rules. The Carrier maintains that discipline was justified in this situation.

Safety Rule 1161(c) provides: "To protect against injury while handling material, equipment, supplies and freight, employees must: avoid freight or material falling on hands or feet".

When handling heavy equipment, where the risk of injury exists, employees should be very careful. The Claimant knew the jack was heavy and that the handle was small. He should have tried to move it with two hands, the way Mr. Self stated. If, after lifting the jack with two hands, the Claimant discovered that it could be carried with one hand, he could then safely do so. But, knowing that it was heavy and difficult to carry, the Claimant was negligent in lifting it with one hand.

By being negligent, the Claimant violated Safety Rule 1161(c). The Carrier needs to ensure that the safety rules ^{are} ~~be~~ followed. Therefore, they need to

discipline those who violate the rules. In this particular situation, the suspension was justified.

AWARD

Claim denied.

Nicholas Kumar
Neutral Member

C. A. Mattilo, Jr.
Carrier Member

Bryce L. Hall
Organization Member

DATE:

1/13/86