

PUBLIC LAW BOARD NUMBER 3530

Award Number: 62

Case Number: 62

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Electric Welder, M. W. Quesenberry, 636 Missimer Lane, Vinton, VA 24179, was given a 5 day actual suspension on May 5, 1983 for alleged violation of Safety Rules 1287, 1071, 1051 and General Notice D of the N & W Safety Rules Book. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request payment for the 5 day actual suspension with seniority and vacation rights unimpaired.

FINDINGS

Claimant was employed with Carrier as an Electric Welder. By letter dated May 6, 1983, Claimant was informed of a five day suspension assessed against him for violating Carrier's safety rules while on duty May 2, 1983. The Organization requested and was granted an investigation concerning the suspension. By letter dated August 10, 1983, Claimant was notified that the discipline imposed was being upheld.

The issue to be decided in this dispute is whether Claimant was disciplined for just cause under the Agreement.

The position of the Organization is that Claimant's actions did not warrant disciplinary action.

The Organization contends that Claimant did not violate any safety rules by the way in which he was riding on the burro crane. The Organization cites Claimant's testimony that the manner in which he was riding on the burro crane was normal and that other employees rode on the crane in a similar position. The Organization further cites the testimony of Machine Operator F. M. Call to substantiate its position that Claimant was not riding improperly on the burro crane. The Organization maintains that Carrier has failed to establish any specific safety violations or that the riding technique was otherwise improper or unsafe.

Carrier contends that Claimant was properly disciplined for riding the burro crane in an inherently unsafe manner.

Carrier maintains that there is no question concerning the impropriety of Claimant's actions. Carrier contends that riding on the front end of a machine while it is in operation is inherently unsafe, in clear violation of several safety rules, including Rules 1287 and 1051. Carrier cites the testimony of Engineer D. A. Griffith that he witnessed Claimant riding on the southwest corner of the crane and that Claimant appeared to be riding in a dangerous manner. Carrier maintains that the

testimony of Griffith and Call established beyond doubt that Claimant was riding on the crane in an unsafe manner. Carrier further maintains that Claimant's testimony regarding other employees riding the same way is irrelevant, since it is unsafe in any event and violative of the rules cited.

Finally, Carrier maintains that the discipline imposed was reasonably <sup>e</sup> in light of the offense and Claimant's poor prior safety record. Carrier cites the fact that Claimant has been injured on several occasions and has been counselled numerous times regarding safety violations, and maintains that suspension was necessary to alert Claimant to the need to perform in a safe manner while on duty.

After review of the record, the Board finds that the claim must be denied.

Initially, we find that Carrier has sustained the charge against Claimant through substantial evidence. Although some dispute of fact exists concerning Claimant's position on the burro crane, it is a well established principle that Carrier may weigh evidence and determine the credibility of witnesses so long as it does not abuse its discretion. In the present case, sufficient evidence exists that Claimant was riding in a precarious position while on the moving burro crane, risking serious injury to himself. The testimony of Griffith indicated that

Claimant's body was not entirely on the crane, and the testimony of Call substantiated that observation. In light of the overall weight of evidence, we find that Claimant acted in a negligent and unsafe manner on the date in question.

Finally, we find that the discipline imposed was not excessive under the circumstances. Claimant had been previously counselled regarding the necessity of observing safety procedures and was therefore aware of the need to operate in a responsible manner.

AWARD

Claim denied.

Nicholas Thomas  
Neutral Member  
J. C. Lyons  
Carrier Member  
Bruce L. Hall  
Organization Member

DATE: 1-29-88