

PUBLIC LAW BOARD NUMBER 3530

Award Number: 73

Case Number: 73

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Assistant Crane Operator, W. V. McPherson, P. O. Box 613, Petersburg, VA 23803, was disqualified as an Assistant Crane Operator on all cranes for alleged responsibility in removing padlock from electric mechanism of a main line switch without first obtaining permission from the dispatcher. Claim was handled in accordance with the Railway Labor Act and agreement provisions. Employees request he be requalified and pay for time lost with all other rights unimpaired.

FINDINGS

Claimant was employed as an Assistant Crane Operator. By letter dated July 27, 1984, Claimant was notified to attend an investigation concerning charges that he removed a padlock from the electric locking mechanism of a main line switch without permission while on duty July 25, 1984. After investigation, held on August 7, 1984, Claimant was disqualified as an Assistant Crane Operator on all cranes.

The issue to be decided in this dispute is whether Claimant was disqualified as an Assistant Crane Operator for just cause under the Agreement.

Initially, the Organization admits that Claimant unlocked the switch in question, but asserts that Claimant had permission from Yardmaster G. E. Merritt to unlock the switch and that he therefore acted in accordance with the operating rules. The Organization cites Claimant's testimony that Merritt had given him implicit permission to perform work in the yard, which he interpreted as permission to unlock the switch in question. The Organization contends that Claimant's testimony should be credited over that of Merritt; or that, at the very least, the doubt raised by the conflicting testimony should invalidate the discipline imposed, since Carrier could not establish Claimant's culpability through substantial evidence. The Organization concludes that Carrier failed to meet its burden of proof regarding the charge against Claimant and that the discipline imposed was therefore without justification.

Carrier contends that the evidence adduced at the investigation clearly established that Claimant violated Operating Rule 266 which states: "Maintenance of Way employees must not operate such switches without first obtaining permission from the control operator." Carrier contends that Claimant unlocked the switch without receiving proper permission, and that he was justifiably disqualified for so doing.

Carrier argues that no question exists concerning Claimant's failure to receive proper permission from the dispatcher. Carrier cites Claimant's own testimony that he never spoke to the Dispatcher on the date in question. Carrier further contends that Claimant never received permission, implicit or otherwise, from Yardmaster Merritt. Carrier cites Merritt's testimony

that at no time did he indicate to Claimant that permission had been granted by the Dispatcher to unlock the switch. Carrier further cites Merritt's testimony that he lacked the authority to grant Claimant permission to unlock the switch, since only the Dispatcher could authorize such action. Carrier further contends that Claimant's erroneous assumption regarding permission in no way excuses his actions and reveals his inability to perform properly and safely as an Assistant Crane Operator. Carrier argues that Claimant's actions could have had catastrophic consequences, and that under the circumstances it was obligated to disqualify him. Finally, Carrier contends that this incident, when examined in light of Claimant's overall poor record, indicates that he is incapable of performing the duties required of an Assistant Crane Operator.

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

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

We find that Carrier has adequately sustained the charge against Claimant. The evidence presented clearly establishes that Claimant did not at anytime receive permission from the Dispatcher to unlock the switch. The Dispatcher was the only person authorized to give such permission. The testimony of Merritt further establishes that he did not give Claimant permission to unlock the switch or indicate to Claimant that the Dispatcher

had given such permission. Claimant either acted on his own in unlocking the switch or erroneously assumed that Merritt had given him permission. In either case, Claimant's actions constituted a clear violation of Operating Rule 266 and extremely negligent behavior. Claimant's actions could have had serious consequences, jeopardizing both Carrier's equipment and his fellow employees. Under the circumstances, we find that Carrier acted reasonably in disqualifying him from the Assistant Crane Operator position.

AWARD

Claim denied.

Nicholas Rymas
Neutral Member
W. L. Altman, Jr.
Carrier Member
Bryce L. Ball
Organization Member

DATE: 1-29-68