

PUBLIC LAW BOARD NO. 3845

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of
Way Employees

and

Norfolk and Western Railway
Company (Lake Region)

Case No. 1
Award No. 1

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Machine Operator John L. Boyd for allegedly causing extensive damage to the power switch machine at Palos Park, Illinois, July 13, 1983 and failure to detect and report damage to supervisor was without just and sufficient cause and excessive. [Organization File: MW-CGO-81-6].
- (2) Claimant John L. Boyd shall be allowed the remedy prescribed in Rule 22(e)".

OPINION OF THE BOARD

Claimant, an employee having some nine years of service with Carrier, was operating a Speed Swing machine in the vicinity of Palos Park, Illinois on July 13, 1983. At about 5:50 p.m. that day, an alert engineer noticed an improper signal indication which was traced to an extensively damaged switch

movement in the area where Claimant had been working. The discovery prevented what might otherwise have been a very serious commuter train accident. Investigation revealed that the Speed Swing which Claimant had been operating was the probable cause of the damage. Claimant was notified to report for a formal investigation of the incident and, as a result, was dismissed from Carrier's service on August 18, 1983.

No one saw Claimant damage the switch movement and he emphatically denies that he did so. There was, however, a sufficiency of circumstantial evidence that the Speed Swing was the probable cause of the damage to the switch movement and that Claimant was the sole operator of that machine when the damage occurred. No credible alternative explanation for the damage was put forth.

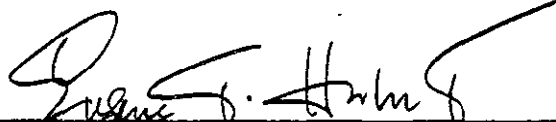
At the hearing on this matter, which this Board finds to have been both fair, impartial and without prejudice to Claimant, Carrier made a determination regarding the credibility of the witnesses which led it along with the evidence presented to a conclusion that Claimant was indeed responsible for the damage. Such a conclusion should not lightly be overturned. While a case based solely on circumstantial evidence will always leave some certain doubt as to the guilt or innocence of the accused, there is no room for compromise between those two choices.

In light of all the evidence presented, a finding of Claimant's guilt in this matter was not unwarranted. Nor

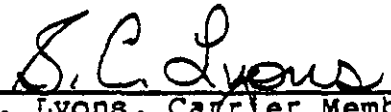
given the seriousness of the charge, was the dismissal of Claimant an unreasonable or excessive punishment.

AWARD

Claim denied.



E.T. Herbert, Neutral Member



S.C. Lyons, Carrier Member



H.G. Harper, Employe Member

June 25, 1985