

PUBLIC LAW BOARD NO. 4187

PARTIES) BROTHERHOOD OF RAILROAD SIGNALMEN
TO)
DISPUTE) NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"Claim on behalf of Signalman Frank Jones, Jr., to have his record cleared of a five day deferred suspension, account of Carrier violated the current Signalmen's Agreement, as amended, when it failed to meet its burden of proof with respect to the charges placed against him in an investigation held on October 5, 1984." (Carrier File: SG-RO-84-8; BRS File: 6871-NW)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

While performing service as a Leading Signalman in the Roanoke Signal Shop on May 25, 1984, Claimant sustained an injury as a result of falling through a suspended ceiling in the "attic area" of the shop building. He was directed to attend formal investigation and thereafter assessed five days deferred suspension in connection with a charge that he had violated Notice "H" of the General Safety Rules.

General Notice "H" of Carrier's Safety Rules of General Conduct, reads:

"Employees who commit unsafe acts which jeopardize personal safety of themselves and others will be subject to discipline, even if their conduct violates no specific rule."

The attic has a limited walkway and storage area, i.e., a plywood floor, about 13 feet by 13 feet, supported by cross beams. The major portion of the attic area consists of a suspended ceiling, with the ceiling suspension leads tied direct to roof beams. The attic area has no lights.

Claimant says he went to the attic to retrieve some signal pattern backgrounds. He climbed a portable ladder to get into the attic, and maintains that while getting the patterns, he made a step backwards and fell through the suspended ceiling some 16 feet to the shop floor.

It is the position of the Carrier that Claimant was in an area

where he had no real official business and that [] was performing no valid service for the Carrier. It says that on the day of the incident Claimant's assignment was to weld and to work on a CTC machine case and that such work tasks did not require Claimant to be in the attic. Thus, in response to arguments that it did not provide a safe place for Claimant to work, Carrier says that the area in question was not an area in which Claimant properly belonged. Furthermore, Carrier says it was of Claimant's own initiative, without instructions from any supervisor, that, for some undeterminable reason, Claimant strayed some 14 feet into an unsafe area of the attic, resulting in his falling through the ceiling.

The Carrier also takes the position that since Claimant was the employee responsible for the storage of the patterns in the first instance, he was and surely should have been aware of the location where such patterns had been placed and the necessity to exercise particular care in retrieving the patterns.

Contrary to Carrier assertions that Claimant was at fault, the Organization argues that discipline was not for good and just cause. It says that if flooring had been properly provided for the attic storage area or had it been required that the signal patterns be stored in a safe place, injury would not have occurred to Claimant. Moreover, the Organization states there was no testimony during the investigation to the effect that Claimant had strayed, as it submits Carrier has only meantime alleged, some 14 feet into an unsafe area. In this regard, the Organization submits that the distance of 14 feet was not mentioned during the investigative hearing.

As concerns Claimant going to the attic to retrieve signal backgrounds, the Organization says there was a backlog of work orders that had to be done on several signal backgrounds and that Claimant was the usual employee to do background work, as he does anything that has to do with metal or welding, and whether it was the day in question, or a following day, that Claimant was the employee who would have to go to the attic to retrieve the signal backgrounds. It argues that Carrier tries to confuse the issue by creating a scenario that Claimant should not have been where he was, without considering the actual fact that Claimant had to be where he was at some time to perform his work.

In consideration of all the facts and arguments offered by the parties, both orally and in writing, the Board will hold that the discipline administered Claimant was too severe. This determination is based on the Board's opinion, on the one hand, that there appears to have been a degree of laxity on the part of Carrier in assuring that the attic was a safe place for the storage of signal patterns and thereby a safe work area. In this regard, it must be presumed that Carrier was aware of the limited walkway and storage area. It had permitted storage of the signal patterns in the attic, and while it may well be that Claimant had not been directed in this particular instance to retrieve the signal patterns, the Carrier does not dispute the Organization contention that Claimant was the employee it generally used to

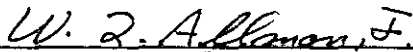
retrieve the signal patterns from the attic. On the other hand, notwithstanding our belief that the accident was unintentional, Claimant is responsible for observance of all safety rules and regulations as are all employees. He had been to the attic storage area on other past occasions. He knew or should have known that there was but a limited walkway and storage area, and, we presume, no railing to restrict movement to this restricted area. In this same regard, there is nothing of record before us to show that Claimant had refused to go to the attic to retrieve signal patterns because he found it to be an unsafe work area, and may even have gone to the attic of his own accord. Finally, the record fails to show the extent the storage space was being utilized and whether it was necessary, albeit neglectful and careless, for Claimant to have stepped back or, as Carrier says, to have strayed from the walkway to retrieve the signal patterns. Accordingly, the Board will hold that the discipline be reduced to a written reprimand.

AWARD:

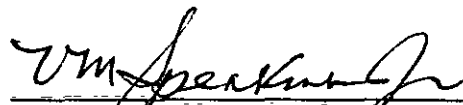
Claim disposed of as set forth in the above Findings.



Robert E. Peterson, Chairman
and Neutral Member



W. L. Allman, Jr.
Carrier Member



V. M. Speakman, Jr.
Organization Member

Roanoke, VA
July 31, 1987