

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 T. J. Grillo to remove the discipline of dismissal assessed as a result of the findings of an investigation held on December 10, 1986." (Carrier File: SG-MOB-86-2; BRS File: 7109-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.

There is no question from the facts of record but that Claimant deserved to be disciplined for having lighted a paper bag in the bed of a company truck.

Fortunately, the small paper bag was damp and did not flame up, but only smoldered for a few seconds before another employee kicked it out of the truck, and no physical or property damage occurred as a result of the incident.

In explanation of his conduct, Claimant says it was "horseplay." He says that horseplay was common among signal gangs, and that he did not believe anyone would be burned by the bag or that there would be any damage to the company vehicle. He submits the bag never flamed up, but only smoldered, and that: "I do believe that if the bag would have flamed up I probably would have grabbed it and tossed it out of the truck."

As the Carrier submits, horseplay and practice jokes, and all conduct of a similar nature, is expressly prohibited while on duty or on company property.

Clearly, it is conceivable that horseplay can result in serious injury or damage, yet so long as it does not, the mere fact that one can imagine a case where it might does not automatically subject an employee to imposition of the severest of disciplinary penalties, namely, discharge from service. Each case must be viewed in the light of the particular circumstances. Here, the act of horseplay took place in front of supervisors and other employees who could hardly fail to take notice and such action as they felt necessary, i.e., kicking the smoldering bag out of the truck and removing a can of gasoline that was several feet away from the smoldering ash.

Moreover, while we recognize that the supervisors had sufficient reason to be angry about Claimant's actions, we do not find that such concern properly translates to an exaggeration of charges, i.e., saying Claimant placed "a flaming bag (sack) on some debris (trash) in the bed of Company Truck No. 6131 where a can of gasoline was located, which action created a hazard to [himself], fellow employees and to Company property."

In the circumstances, and giving due consideration to Claimant having been disciplined in the past for violation of other rules of conduct, this Board will hold that the penalty of dismissal be set aside and Claimant be restored to service with full seniority rights and benefits unimpaired, but without payment for time out of service. The time Claimant has been out of service will be recorded as a disciplinary suspension. Claimant is admonished to recognize that his disciplinary record is now such that he may well be subject to imposition of the ultimate penalty of dismissal from all service should he fail to take action to improve his overall conduct and be found in violation of established and recognized rules which govern the employee-employer relationship.

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