

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)	
)	Case No. 3
and)	
)	Award No. 2
NORTHEAST ILLINOIS REGIONAL COMMUTER)	
RAILROAD CORPORATION)	

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
J. S. Morse, Carrier Member

Hearing Date: May 20, 1996

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Thirty (30) day suspension imposed upon Water Service Foreman S. J. Greer for alleged "violation of Rule 'L', Paragraph 1 and Rule 'N', Paragraph 2, Numbers 1 and 2 of the NIRCRC Employee Conduct Rules" was arbitrary, unwarranted and an abuse of the Carrier's discretion (Carrier's File 08-13-202).
2. The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

Public Law Board No. 5564, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On February 13, 1995, Claimant was driving a Carrier-owned pickup truck in the vicinity of Roosevelt Road and Halstead Street in Chicago. An employee of People's Gas Company stopped Claimant and advised him that an arc welder that he had been carrying in the truck had fallen out at Jefferson Street. Claimant had used the welder on February 9th to thaw frozen pipes and had kept it in the truck since that time.

Claimant observed that the welder was not in the truck. He retraced his route but was unable to find the welder. He then reported the incident to his supervisor.

On February 17, 1995, Carrier advised Claimant to attend an investigation on March 3, 1995, concerning the lost welder. The notice charged Claimant with violating Rules L and N. The hearing was postponed to and held on March 16, 1995. On April 4., 1995, Carrier advised Claimant that he had been found guilty of the charges and was assessed a thirty day suspension.

The Organization argues that Carrier failed to prove the charges against Claimant. The Organization maintains that the record established that Claimant secured the welder properly and to the best of his ability. The Organization contends that its position is supported by the fact that the welder remained in the truck for several days without incident. The Organization further argues that Claimant had no prior discipline on his record since he transferred to Carrier from the Soo Line in 1993, and that the penalty imposed was arbitrary and excessive.

Carrier argues that it proved the charges by substantial evidence. It further contends that, in light of the seriousness of the offense, the penalty imposed was appropriate.

The Board has reviewed the record carefully. Claimant's Supervisor testified that Claimant admitted to him that he had not secured the welder in the truck. Although Claimant denied making such an admission, as an appellate body, we defer to the resolution of credibility conflicts made on the property. Furthermore, although Claimant testified that he believed he had secured the welder properly, he also testified that he had secured the welder to a two-wheeled dolly but had not secured the dolly to the truck. Therefore, we find that there is substantial evidence in support of Carrier's finding that Claimant violated Rules L and N.

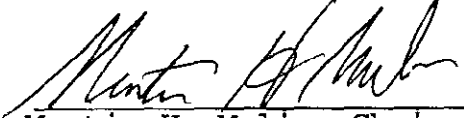
Carrier assessed a thirty day suspension for the instant infractions. As an appellate body, we do not review the penalty de novo. The question before us is not whether we would agree with the penalty if we were to impose discipline in the first instance. Rather, we are confined to reviewing the penalty to determine whether it is arbitrary, capricious or excessive.

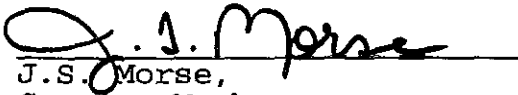
Claimant's negligence in failing to secure his load completely posed a serious safety hazard. It also cost Carrier a valuable piece of equipment. Given the seriousness of the offense, we are unable to say that the thirty day suspension was arbitrary, capricious or excessive.

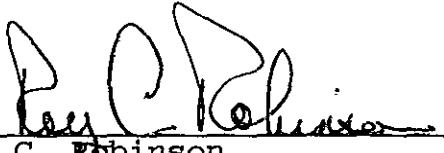
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AWARD

Claim denied.


Martin H. Malin, Chairman


J.S. Morse,
Carrier Member


R.C. Robinson
Employee Member

Dated at Chicago, Illinois, August 30, 1996.