

PUBLIC LAW BOARD NO. 1760

Award No. 11

Docket No. MW-MOB-78-21

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: Carrier violated the effective agreement by assessing Herman Williams thirty (30) days deferred suspension on unproven charges after hearing which was not held in accordance with Rule 20. The decision rendered by Mr. F. R. Cashner on May 25, 1978 when he assessed Mr. Herman Williams 30 days deferred suspension be stricken from his record.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a Section man for over 5½ years, received an on-duty injury on April 17, 1978. As a result thereof he received a notice to attend a formal investigation on May 10, 1978 charged as follows:

"To determine the facts and irresponsibility, if any in connection with your being injured at 9:35 a.m. on April 17, 1978, at North Kansas City, Missouri when you broke a bone in your big toe on the right foot while unloading ties from a gondola to the company truck....."

Carrier, as a result of such investigation, concluded Claimant guilty as charged. He received 30 days deferred suspension as discipline therefor.

Claimant received a fair hearing.

There was insufficient evidence adduced to support the conclusion reached by Carrier. Here, Claimant followed the specific instructions of his Foreman who had told him to stand inside the truck, which, incidentally, was loaded with shovels, track jacks and a spike keg stacked on one side of the truck. It appears that such position made it most difficult, if not impossible, for the employees to get a secure hold of the heavily cresoted and slick ties. The ties had to be handled chest high. In any event, Claimant's Foreman was standing at the truck watching the manner in which the work was being performed. He made no effort to instruct the employees to perform the work in any other manner than that in which it was being performed under those difficult, if not hazardous, conditions. The Foreman took no exception to the manner in which the work was performed. In fact he testified, as did Claimant, that the use of tongs were impractical. In any event, the evidence produced does not support the charges made and in the particular circumstances, this claim will be sustained.

Award: Claim sustained.

Order: Carrier is directed to make this Award effective within 30 days of date of issuance shown below.



M. A. Christie; Employee Member



G. C. Edwards, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Falmouth, Massachusetts, May 31, 1979.