

PUBLIC LAW BOARD NO. 1760

Award No. 113

Case No. 113

Carrier File MW-DEC-85-49

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement

of Claim: D. Hennessey-Disqualification as foreman/asst foreman for failure to follow instructions to inspect track and switches at Illiopolis, IL.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

Claimant, on March 13, 1987, was serving as Foreman on the Springfield District. At approximately 12:15 on this date Roadmaster McGinnis met Claimant at a Safety class held in Jacksonville, Illinois. He instructed Claimant as to the work he wanted him to perform following the class. Said instructions were to inspect the diamond at Starnes and then go to Illiopolis and inspect the lead, the run around tracks and switches at Borden Chemical Plant. Thereafter, the Claimant was to talk to the Borden Plant Manager, Mike Griesham, about his concerns regarding the track conditions. McGinnis repeated those instructions to Claimant at the completion of the Safety class and told him that he would call him at 9:00 PM to find out what he had found during his inspection. Claimant left the Safety meeting at approximately 3:40 PM.

The D135 switcher derailed on the east switch of the run around track at Borden Chemical Plant as a result of a faulty track structure about 5:10 PM. The derailment was not cleared until approximately 7:00 PM. The Roadmaster was told of the derailment at approximately 7:00 PM by a phone call from the Assistant Roadmaster.

McGinnis called Claimant at 9:00 PM but was not able to reach him until 9:40 PM. McGinnis asked Claimant about his inspection at Borden. McGinnis was told that he had checked the east switch of the run around track (the track where the derailment occurred at 5:10 PM) at approximately 5:30 PM and it checked okay. McGinnis concluded therefrom that Claimant could not have checked the switch at 5:30 PM as he indicated since the derailment was not cleared until 7:00 PM. Claimant also told McGinnis that he discussed with Plant Manager Griesham the broken rail between No. 3 and No. 4 track.

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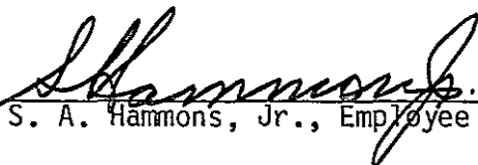
McGinnis discovered from talking to Griesham the following day that he had not spoke with Claimant. Claimant also told McGinnis in a conversation the following day that he had spoken with the Train Crew. McGinnis was told by Trainmaster Clark, who canvassed that crew, that none of the crew members had spoken with Claimant on March 13.

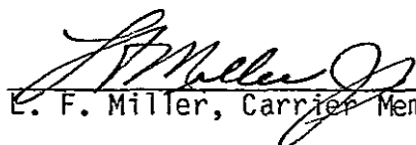
As a result of the discrepancies and the factual information made available to McGinnis, Claimant was summoned to a formal investigation for failure to follow instructions. As a result thereof, Carrier concluded him to be culpable and as a result disqualified him as a Foreman and Assistant Foreman. The Claimant retired on July 29, 1989.


The Board after review of the entire record concluded that without prejudice to the position of both parties that it would order Carrier to clear the record, by having Claimant's service record cleared but without any pay being involved, in order that the Claimant could retire as a Foreman.

Award: Claim disposed of as per findings.

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


S. A. Hammons, Jr., Employee Member


E. F. Miller, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued September 27, 1990.