

PUBLIC LAW BOARD NO. 1760

Award No. 122

Case No. 122

Docket No. MW-DECR-89-27

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company
 (Former Wabash)

Statement

of Claim: Claim on behalf of C. W. Curto appealing the ten-day suspension and disqualification as a Machine Operator as a result of an investigation held on July 19, 1989 in which he was charged with responsibility for damage to ballast regulator and rail due to failure to lock plow in the up position while tramping.

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

The Claimant, C. W. Curto, a Machine Operator, was operating a ballast regulator at MP DH 414.6 in Springfield, Illinois on June 19, 1989. Said ballast regulator derailed at about 2:40 PM at Nelch Switch due to the plow coming down while in the process of tramping to the clear.

The Track Supervisor's preliminary investigation disclosed that the front plow was not properly locked for the tramping movement. A mechanic inspected the safety locks and found them to be in working order. Said supervisor, on July 5, 1989, notified the Claimant to attend a formal investigation:

"To determine your responsibility, ... in connection with damage to ballast regulator B BR 7905 and rail at Springfield, Illinois,... when the front plow of the machine came down on the switch due to your failure to lock the plow in the up position while tramping."

As the result thereof, Carrier concluded him to be culpable of the charge. He was assessed a 10 day actual suspension and disqualified as a machine operator.

The Board finds that the Claimant was accorded the due process to which entitled under the discipline rule.

There was sufficient evidence adduced to support the conclusion reached by Carrier as to Claimant's culpability.

However, the discipline was found to be excessive. In the circumstances prevailing the Board will restore the Machine Operator's right.

Award: Claim disposed of as per findings.

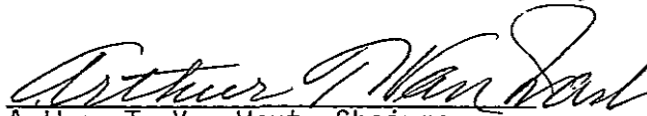
Order: Carrier is directed to make this Award effective within thirty days of date of issuance shown below.



S. Hammons, Jr. Employee Member



L. F. Miller, Jr., Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 31, 1991.