

PUBLIC LAW BOARD NO. 1760

Award No. 126

Case No. 126

Docket No. MW-DECR-89-50

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

Statement

of Claim: Claim on Trackman J. E. Beck, Jr., for pay for all time lost while suspended 15 days for failure to properly perform his duties in a safe manner August 23, 1989, resulting in personal injury.

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

The Claimant Laborer, J. E. Beck, Jr., on August 23, 1989 was assigned to and working in extra gang 103. He was changing ties at the north end of the roundhouse building when injured. The Claimant held a spike lifter that was hit by a spike maul held by Trackman A. B. Wessel which as a result thereof caused a piece of metal to break off the spike maul and strike the Claimant in the left leg. Beck lost 25 days from work as a result of that injury.

Both the Claimant and Mr. Wessel promptly reported the incident. Track Supervisor Jackson met both at the accident site. According to Jackson both men admitted that they should have used a sledge hammer, which was available and within walking distance, instead of the spike maul to strike the spike lifter.

The Claimant was cited to an investigation for violation of Safety Rule 1204 which, in essence, prohibits use of spiking mauls to strike specific classifications of hardened tools. As a result thereof, Carrier found him culpable as charged. He was suspended from service for a period of 15 calendar days as discipline therefor.

Mr. Wessel, incidentally, also received the same disciplinary suspension which is appealed to this Board in Case 130.

Safety Rule 1204 reads:

"Spike mauls must not be used to strike chisels, rock drills, punches, lining pins, or other spike mauls."

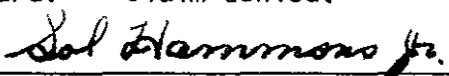
The Board finds that Claimant was accorded the due process to which entitled. The notice of investigation was so precise as to have well put him on notice as what to prepare a defense on or against. The Claimant was well represented. He had the right of confrontation and examination. The Claimant faced his accusers. He exercised his right of appeal.

The question of appearing as witness at Trackman Wessel's investigation was not timely raised and it will not be reviewed.

There was sufficient evidence adduced to support Carrier's conclusion as to the Claimant's culpability. The Claimant admitted culpability at the scene of the incident. The admission was that they were aware that they should not have used the spike maul to strike the spike lifter. The defense raised at the investigation was contrary to the statements given at the time of the incident. Carrier chose to believe its witnesses. Such assertions were more self serving than a valid defense. The fact that the term "spike lifter" does not appear in 1204 is not a valid reason to conclude that the rule did not apply. The tools cited in the rule are categories of hardened tools. The spike lifter which is shaped similar to a B&O punch, is used as a wedge, similar to a track chisel, in order for it to drive between the spike head and tie plate.

The record also indicates that the Claimant admitted that they normally use a sledge hammer to strike a spike lifter. For the Employees to further argue that the Claimant, who was working with Mr. Wessel, should not be held accountable because of that fact simply creates credulity. Both admitted their guilt. To then deny guilt solely on the grounds of "association by work" is stretching logic thinly. The Claimant had culpability. The Claimant had an affirmative duty and a responsibility to at least have stated that a sledge hammer should be used to strike the spike lifter. Mr. Beck knew what tool was to be used. He was as much in violation as was Wessel in violating Rule 1202. In the particular circumstances, this claim will be denied.

Award: Claim denied.


S. Hammons, Jr. Employee Member


L. F. Miller, Jr. Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member