

PUBLIC LAW BOARD NO. 1760

Award No. 16

Docket No. NW-FTW-77-13

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: Carrier violated the effective agreement by dismissing Machine Operator Virgil Beery from service on July 18, 1977, on unjust and unproven charges. Virgil Beery shall be reinstated with all rights unimpaired and paid for all time held out of service.

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 Machine Operator, was dismissed from service, July 18, 1977, after the Tie Handler that he was operating collided with a Tie Shearer. As a result of the General Chairman's request, a formal investigation was held:

"regarding your dismissal from service as a result of accident which occurred involving collision of Tie Handler No. 30918, operated by you and Tie Shearer #20989 which occurred at Mile Post 197.1 at 11:15 a.m. July 18, 1977....."

As a result of that investigation, held on August 16, 1977, Claimant was advised on September 2, 1977 that his dismissal was upheld.

Claimant and the other members of his Gang were moving track equipment from Legro to Peru, Indiana. Claimant was operating the Tie Crane.

It was the third machine from the head end. After they proceeded across a road crossing at Mile Post 197 the lead machine, operated by Assistant Roadmaster W. E. Tesso stopped. Mr. Tesso dismounted, after giving a stop signal to the second machine, for the purpose of observing the other machines crossing the road. Claimant was operating the third machine. He failed to stop his machine and it collided with the Tie Shearer causing extensive damage to that piece of equipment as well as some injury to the Operator thereof.

The Board finds that Claimant received due process, that there was sufficient competent evidence induced to support the conclusion reached by Carrier. As to the discipline assessed the record indicates that Claimant has always been considered as a good Operator. Therefore, without establishing any precedent thereby Claimant is reinstated to service on the basis of mitigating circumstances without any pay for the time that he was out of service, subject of course to his passing the usual return to service physical examination.

Award: Claim disposed of as per findings.

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.