

PUBLIC LAW BOARD No. 1760

Award No. 42

Case No. 42

Docket No. MW-MOB-74-23

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company (Former Wabash Railroad)

Statement

of Claim: Appeal of discipline of the thirty-day actual suspension assessed Phil Saunders as a result of formal hearing held on November 23, 1981 to determine the facts and circumstances surrounding an alleged injury to his chin at Bridgeton, Missouri on October 28, 1981, and request that this investigation be struck 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 Crane Operator on the Moberly Division, was notified, under date of November 5, 1981, to report for a formal investigation on the charge:

"To determine the facts and circumstances surrounding your alleged injury to your chin at Bridgeton, Missouri on October 28, 1981."

Following the investigation, Claimant was notified by the Division Engineer-Maintenance on December 11, 1981:

"The facts as determined in the hearing ...on November 23, 1981...clearly shows you failed to properly report this injury and that you endangered your fellow employees by replacing the steps in an unsafe condition and issuing no warning to them.

For your responsibility you are assessed thirty (30) days actual suspension. You will be advised at a future when to begin the suspension."

The record reflects that Claimant was removed from service on December 7th, for having been in violation of Rule G on December 4, 1981. He was subsequently dismissed on January 8, 1982 as a result of the investigation held in connection therewith on December 21, 1981. Hence, the thirty (30) days in the instant case were never served.

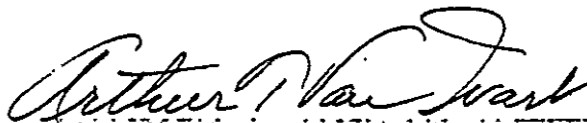
Clearly, Claimant was charged with how his injury occurred. However, he was found to have responsibility for two matters with which he had not been charged and thus were clearly distinct from the charge placed against him. Consequently, having been charged with one thing and found guilty of another creates procedural error so egregious as to be cause to reverse the discipline assessed. Therefore, the instant claim will be sustained.

Award: Claim sustained as per findings.

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


M. A. Christie, Employee Member


S. C. Lyons, Carrier Member
I dissent


Arthur T. Van Wart, Chairman
and Neutral Member

Issued May 13, 1983.