

PUBLIC LAW BOARD NO. 1760

Award No. 49

Case No. 49

Docket No. MW-STL-83-3

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement  
of Claim:

1. Carrier violated the effective agreement when Foreman Robin Williams was unjustly assessed five (5) days actual suspension for his responsibility in the accident on January 19, 1983.

2. Claimant Williams shall be paid for all time lost at his respective rate and any additional overtime that his gang worked and the investigation be stricken from his record with all rights unimpaired.

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 Foreman, on January 19, 1983, was a passenger in company truck #5978 driven by Laborer M. Hoey. The vehicle was proceeding down Missouri Avenue at approximately 7:45 AM when it was flagged down by Trainmaster Harrison travelling in the opposite direction. Said truck stopped and subsequently backed up damaging another vehicle, which had stopped behind him, to the extent of approximately \$1,100.

As a result of the incident Claimant and Laborer Hoey were notified to attend a formal investigation on the charge of alleged violation of Safety Rules D, E and 1103.

As a result Carrier concluded them to be guilty as charged and assessed a discipline of five days therefor which is here appealed.

Safety Rules D and E read:

"D. The service demands the efficient, intelligent and safe discharge of duty. It is the duty of all employees to exercise care to avoid injury to themselves or others.

E. Supervisor is responsible for the safety of all employees under their supervision. They will make observations and check such action as making necessary to insure compliance with these rules. The term 'supervisor' as used in these rules applies to any individual who supervised the works of others."

The Board finds that Claimant was accorded the due process to which entitled under his discipline rule. The charge was precise. He was properly notified, capably represented, had the right of witnesses and he exercised his right of appeal.

There was insufficient evidence to support the conclusion reached by Carrier to Claimant's culpability. Here, the trainmaster caused the truck to stop. There was no way looking through the mirror in the truck that one could see an automobile had stopped behind the truck, their vision did not show that. There was no mirror in the center of the truck to look back through. The Board finds that in the circumstances the assessment of discipline in excess of a reprimand was excessive.

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.

M.A. Christie  
M. A. Christie, Employee Member

S.C. Lyons  
S. C. Lyons, Carrier Member

*Carrier  
Dissents  
to  
Award*

Arthur T. Van Wart  
Arthur T. Van Wart, Chairman  
and Neutral Member