

PUBLIC LAW BOARD NO. 1760

Award No. 62

Case No. 62

Carrier File MW-MOB-82-30  
MW-MOB-82-15

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 Painter-Helper L. J. Ginn and Painter B. Patrick were each assessed five days actual suspension; Ginn suspension was from November 14 through November 18, 1983, Patrick's suspension was November 7 through November 11, 1983.

2. Claimants Ginn and Patrick shall each be reimbursed in the amount of 40 hours.

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.

Claimants were working on the B&B paint Gang on the Moberly Division. Ginn, a Painter's Helper, had been employed since April 19, 1982.

Patrick, a Painter, had been employed for over 30 years.

Claimants following a formal investigation were advised by the Division Engineer-Construction, on October 28, 1983:

"This is to advise that as a result of a hearing held October 11, 1983, you are hereby assessed five (5) days actual suspension for your responsibility in connection with your failure to properly assemble scaffold and connections at Bridge #133-A at Wentzville, MO on September 27, 1983."

The B&B paint force, on September 27, 1983, were painting Bridge No. 133-A in Wentzville, Missouri. At approximately 3:45 PM the

scaffold on which two employees were working fell to the ground resulting in injuries to the employees thereon, Wilson and Ginn. An investigation thereof determined that the clevice pin loosened and that it had been improperly applied allowing the cable to come loose.

Claimants were the last employees involved in making the cable connection.

Claimants were accorded the due process to which entitled under their discipline rule.


There was sufficient evidence to support Carrier's conclusion as to the culpability of Claimant Ginn. The record, however, is such that by concluding that Ginn had responsibility for insertion of the clevice pin it would therefore exclude responsibility on Patrick's part as he was holding the hook for her to insert the pin. He was therefore not in a position to see whether the pin had been properly inserted and tightened.

Consequently, in the circumstances, Carrier's assessment of discipline to Claimant Ginn is sustained. However, the Carrier's assessment of discipline to Claimant Patrick is denied as being too tenuous.

Award: As per findings, the claim of Patrick is sustained and that of L. J. Ginn is denied.

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

  
M. A. Christie, Employee Member

  
J. A. Abbateello, Jr., Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member