

PUBLIC LAW BOARD 1837

Case #21

(MW-MUN-77-40)

AWARD 21

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
vs
Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. Carrier erred when it assessed discipline on claimants John Gamble and Michael Sutton.

2. The discipline of dismissal is excessive and harsh. The claimants should now be restored to service with seniority unimpaired, and compensated for their wage loss.

FINDINGS: This Board upon the whole record and all the evidence finds that:

The carrier and employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as amended.

This Board had jurisdiction over the dispute involved herein.

OPINION:

The facts of this case are clear: the Claimants were in positions of authority when on February 2, 1977, an explosion and fire occurred causing injury to one or more employees and loss of a camp car, the fault for which they were credited and dismissed from service.

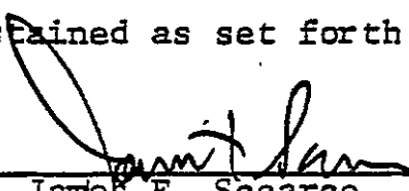
We adhere to the principle that members of supervision hold a greater measure of responsibility for the actions of

their subordinates than those supervised. But the record gives ample evidence that employees involved in performing this work were aware of the dangers involved; the record does not indicate they were under direct orders to do such work in spite of its dangers. The entire incident was a gross error and an indication of poor judgment. While we hold the Claimants to a higher level of responsibility, we do not discern such a variance as encompassing the loss of their livelihood, given the clear indication that the members of the crew were (1) aware of the imminent danger involved and (2) were apparently not being forced to use this approach. An employee is entitled to withdraw from a work environment which is considered unsafe; such an option was available here.


Considering their several years of apparently acceptable service, we shall direct that the Carrier return the Claimants to work, but not necessarily in a position of authority. No back pay is ordered.

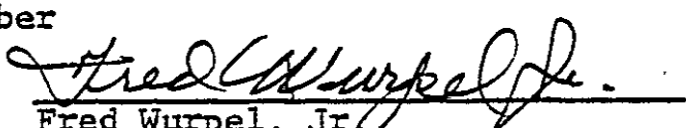
AWARD:

Claim is sustained as set forth in the Opinion.


James F. Searce
Neutral Member

AWD-21, 1837


G. C. Edwards
Carrier Member


Fred Wurspel, Jr.
Organization Member

Dated this 25th day of April, 1981 at Atlanta Ga