

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND
NORFOLK & WESTERN RAILWAY COMPANY

Case No. 68

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood

1. The ten-day suspension and disqualification of Foreman J. J. Bainter and the forty-five day suspension assessed Machine Operator J. P. Traub was without just and sufficient cause, on the basis of unproven and disproven charges, in violation of the Agreement and an abuse of Carrier's discretion. (Files MW-MUN-83-52 (A) AND MW-MUN-82-23 (C))
2. Claimants J. J. Bainter and J. P. Traub shall be allowed the remedy prescribed in Rule 22 (E).

FINDINGS:

Claimant J. J. Bainter was employed by the Carrier in the capacity of foreman and Claimant J. P. Traub was employed by the Carrier in the capacity of machine operator.

On May 26, 1988, the Carrier notified the Claimants to appear for a formal investigation in connection with the following charges:

. . . to determine your responsibility in connection with your violation of General Safety Rules GR-17, 1020, 1170, and 1209 of the Norfolk Southern Safety and General Conduct Rules in that J. P. Traub sustained a personal injury on May 13, 1988, while attempting to lift a hydraulic cylinder and slipped on a chain guard lying in the catwalk of Tamper ET 8609.

After two postponements, the hearing took place on August 22, 1988, and was continued to September 1, 1988. On September

15, 1988, the Carrier notified Claimant Traub that he had been found guilty of all charges and was assessed discipline of forty-five days actual suspension beginning August 14, 1988, and ending September 27, 1988. The Claimant was instructed to return to work on September 28, 1988, and to schedule his company physical. On September 15, 1988, the Carrier also notified Claimant Bainter that he had been found guilty of all charges and was assessed discipline of ten days actual suspension and was disqualified from positions of foreman and/or assistant foreman. The ten-day suspension was to begin September 19, 1988, and end on September 28, 1988. He was also advised to protect his assignment on September 29, 1988.

On November 2, 1988, the Organization filed a claim on each Claimant's behalf, challenging the discipline of each Claimant. On November 9, 1988, the Carrier offered to adjust Claimant Traub's discipline, but the discipline of Claimant Bainter would stand. The Organization declined the offer on December 27, 1988, and this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the procedural objections raised by the Organization are without merit.

With respect to the substantive issue, this Board finds that the two Claimants were guilty of the rule violations with which they were charged. Claimant Traub's injury was directly related to the violations of Rules GR-17, 1020, 1170, and 1029. Claimant Bainter was also guilty of the rule violations because, as the foreman, Claimant Bainter had the responsibility to make sure

that Claimant Traub performed his work in accordance with the rules.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

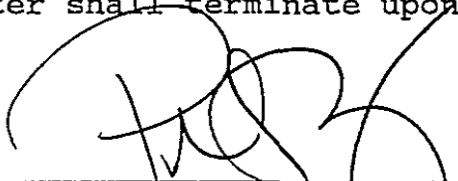
With respect to Claimant Traub, there is no question that the discipline issued to him was reasonable. Claimant Traub's record contains an extraordinary number of safety rule violations, some of them for the same safety rules that were violated here. Claimant Traub had previously been suspended for ten days and thirty days shortly prior to the incident in question. Therefore, with respect to Claimant Traub, this claim must be denied in its entirety.

Claimant Bainter's case is a somewhat different situation. First of all, Claimant Bainter's record is not as bad as Claimant Traub's record. Also, Claimant Bainter's culpability in the present incident is not as severe, and that is presumably why the Carrier issued him only a ten-day suspension. This Board has thoroughly reviewed the record, and we cannot find any reason why Claimant Bainter should have been permanently disqualified from the position of foreman and assistant foreman. Certainly, he was deserving of the ten-day suspension and a temporary disqualification. Therefore, this Board hereby orders that the

ten-day suspension shall stand and the disqualification shall stand, but it shall end upon the issuance of this award. Claimant Bainter's previous record and long service are sufficient to afford him another opportunity as serving as foreman or assistant foreman.

AWARD:

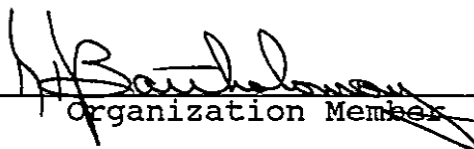
The claim regarding Claimant Traub is denied. The claim regarding Claimant Bainter is sustained in part. The ten-day suspension of Claimant Bainter is upheld and the disqualification of Claimant Bainter shall terminate upon the issuance of this award.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: April 29, 1991