

PUBLIC LAW BOARD NO. 1838

Award No. 26

Case No. MW-PO-77-108

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Norfolk and Western Railway Company

Statement of Claim 1. The fifteen (15) days' actual disciplinary penalty of Claimant J. L. Bentley was without just and reasonable cause.

2. Claimant J. L. Bentley be paid for all time lost and the discipline be stricken 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 March 1, 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, on May 6, 1977, was a Welder-Helper and was requested, on that date, to assist in moving machinery from Miner to Kingston, Ohio to begin work at a new location. Claimant operated motor car No. 236 and while enroute, after travelling some ten miles, encountered a shower of rain which wet the rails as well as the wheels on the machinery. The Operator of the machine travelling ahead of Claimant indicated that he was going to stop. Claimant acknowledged such signal. However, because of the wet conditions and despite Claimant's best effort to stop the machine it collided with the stopped machine causing injury to that Operator.

The Board finds the discipline in the particular facts of this case was unreasonable, unfair and unjust. Here, Claimant had

not been qualified to operate a motor car. He had not taken the motor car rules examination. In a spirit of cooperation Claimant complied with the instructions his supervisor gave him, to operate a motor car with four (4) heavily loaded flat cars attached thereto. The record reflects that he tried everything possible to stop the motor car. However, because the wheels were locked and sliding the collision occurred.

The absence from the investigation of the Roadmaster, who was a direct witness to the accident, the testimony of the Operator of the first vehicle that it was not Claimants fault because he failed to make sure whether the following vehicle could stop before reaching his location are all cause for reversal of the discipline assessed. In the circumstances the Board will sustain the claim.

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.

A. D. Arnett

A. D. Arnett, Employee Member

G. C. Edwards

G. C. Edwards, Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, November 26, 1979.