

PUBLIC LAW BOARD NO. 3530

Award No. 2  
Case No. 2

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Claimant C. H. Robertson be restored to service, paid for all time lost with seniority, vacation and all other rights unimpaired.

FINDINGS:

On November 28, 1981, Train No. 78 was involved in a derailment at Crewe, Virginia, with 24 cars being derailed, with damage of approximately \$1,000,000.

The claimant was notified to attend the formal investigation, which was held on December 11, 1981. Pursuant to such investigation, the claimant was dismissed from the service of the Carrier.

The probative evidence adduced at the hearing established that the claimant was guilty of the charge. The testimony of four witnesses prove the claimants charged out stock rail in "Switch C" on August 19 or 20, 1981, and did, in fact, remove the bond wires resulting in the switch being without switch protection.

Even though a matter of this nature would be a dismissal offense, claimant had approximately thirty-four (34) years of service at the time dismissed. An employee's length of service

and his prior work record should receive serious consideration. While the claimant's personal record contains a previous discipline, he has been out of service approximately 2½ years, which, in the eyes of this Board, is an adequate disciplinary penalty for this offense.


For the reasons herein stated, the Board finds the claimant shall be reinstated as an employee, with full seniority (subject to certain conditions set forth below) and contract rights unimpaired; however, it is noted that, based on Award No. 3 of this Board, claimant is disqualified from all Section Foreman and Assistant Section Foreman positions and his seniority was terminated. Accordingly, his reserved seniority does not include Section Foremen and Asst. Section Foreman Rights. Further, it is the Board's decision that there will be no pay for time lost regarding this discipline.

AWARD:

Claim is sustained in accordance with the opinion.

Carrier is directed to comply with the award within thirty (30) days from date hereof.

  
\_\_\_\_\_  
Neutral Member

  
\_\_\_\_\_  
Carrier Member

  
\_\_\_\_\_  
Organization Member

Date 3/23/84