

PUBLIC LAW BOARD NO. 3530

Case No. 24
Award No. 24

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

And

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

"Discipline of ten (10) days actual suspension assessed G. A. Scott by letter dated August 25, 1982, affirmed by letter dated November 8, 1982 *** requesting (claiming) that Mr. G.A. Scott be paid for the 10 days that he was held out of service and that his record be cleared."

FINDINGS:

Claimant, at the time of the incident in question, was employed by the Carrier as an Operator, Lucky Loader, at Portsmouth, Ohio.

On August 25, 1982, Claimant was assessed a ten day suspension as a result of his alleged responsibility in connection with damage sustained to the Lucky Loader on August 3, 1982.

The issue to be decided in this dispute is whether the discipline imposed by the Carrier was justified under the Agreement.

The position of the Carrier is that it established by substantial evidence that the Claimant was guilty of the

offense charged. The Carrier contends that Claimant's actions concerning the date in question were negligent and caused significant damage to the Carrier's equipment.

The Carrier cites the testimony of Roadmaster B.J. Rowe to substantiate its position. Rowe testified that the cause of the derailment of the Lucky Loader was "a piece of angle iron welded onto the top of the car ..." he further stated that the car itself was mildly defective, but that the angle iron was the cause of the derailment.

The Carrier contends that the Claimant should have informed the Foreman of the situation and let him make a decision. The Carrier cites the testimony of Asst. Engineer O.H. Taylor, who stated in regard to the accident that, "... he (Claimant) should have told the Foreman, and pointed this out to him and let him make a decision what he should do." The Carrier's position is that the Claimant failed to take adequate precautions and therefore was the primary cause of the damage in question.

The Carrier further cites the testimony of the Claimant, who indicated that he knew the angle iron was there and tried to cross the cars anyway. The Carrier maintains that Claimant, once aware of the difficulty, should not have attempted to cross the cars and by doing so unnecessarily caused damage to the Lucky Loader.

The Carrier concludes that the Claimant's poor judgment on the date in question merited his discipline. The Carrier maintains that Claimant must be held responsible for the damage.

The Carrier finds that under the circumstances Claimant's suspension was justified and not excessive.

The position of the Organization is that the Carrier failed to prove that the Claimant acted in a negligent manner. The Organization maintains that the cause of the damage was the angle iron, as explained by Rowe in his testimony. The Organization contends that the Claimant's mishap was not due to any carelessness on his part, but rather was the result of the defective car.

The Organization further contends that the Carrier's action was arbitrary in suspending Claimant. The Organization notes that the Carrier waited some 23 days after the incident to discipline Claimant, instead of disciplining him at or near the time of the incident itself. The Organization cites the testimony of Rowe, who explained the delay by stating, "They were determining how much damage was done to the Lucky Loader to determine how many days that the man should have." The Organization contends that it was arbitrary for the Carrier to base the discipline on the dollar amount of damage, particularly in light of the fact that Claimant was not guilty of any wrongdoing.

The Organization concludes that the Carrier never established that the Claimant was at fault for the damage in question. The Organization notes in conclusion that the Carrier has placed Claimant back in the Lucky Loader, indicating it has confidence in his judgment.

After review of the entire record, the Board finds that the Claim must be denied.

The Carrier has established by substantial evidence that the Claimant was at fault for the accident in question. The testimony of Rowe and Taylor established that the Claimant used poor judgment in failing to take precautions before crossing the cars with the Lucky Loader. The evidence presented indicates that Claimant, who admitted he was aware of the difficulty, should have inquired to his Foreman as to the proper procedure for handling his problem. By failing to do so, Claimant assumed responsibility for his subsequent actions.

The evidence presented also indicated the car itself was not defective. By all accounts, it was the "angle iron" that created the hazard. The Claimant admitted in testimony that he saw the "angle iron" but decided to proceed anyway. The evidence also indicated that Claimant had been operating the Lucky Loader "approximately six or seven months". Therefore it cannot be said that Claimant was unfamiliar with the machine's operation.

Finally, we find that the discipline imposed was not excessive under circumstances. The Claimant's actions on the date in question caused significant financial hardship for the Carrier. The Carrier's expense in repairing the machine and loss of productivity in the interim were due to Claimant's carelessness.

AWARD:

Claim denied.

Nicholas Kumar
Neutral Member

J. A. Mattlo, Jr.
Carrier Member

Bryce L. Hall
Organization Member

Date: 8/7/85