

PUBLIC LAW BOARD NUMBER 3530

Award Number: 31
Case Number: 31

PARTIES TO DISPUTE

NORFOLK AND WESTERN RAILWAY COMPANY

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM

Claim of J.K. Akens for pay for 30 days, with seniority and vacation rights unimpaired.

FINDINGS

This dispute involves the conduct of the Claimant, a Laborer with the T-4 Tie Gang in Norton, Virginia on March 8, 1983. The Claimant was injured when he was struck by an Idler Car, which was attached to a Clamshell that had been moving in reverse to the east on Track No. 5. On May 26, 1983, an investigation was conducted to determine if the Claimant had violated Safety Rule 1051.

The Claimant testified that he was standing between two scarifiers on the track immediately north of Track No. 5. He stated that one of the scarifiers and a tie crane were backing up (moving west) to repair a tie that had been placed improperly by the tie gang. The Claimant stated that Mr. Boone,

Assistant Roadmaster, told him to take a step back, to give the scarifier room to pass. The Claimant stepped back and was struck from behind by the Idler Car on Track No. 5, causing injuries to his head his left shoulder, arm and leg, and his back.

The Claimant stated that he was unaware of any equipment operating on Track No. 5. He stated that he did not hear the Clamshell's warning horn. He stated that the motors of several other pieces of equipment were running, which made it difficult to hear.

Mr. Thomas, a Machine Operator, was driving one of the scarifiers on the track north of Track No. 5. He testified that the scarifiers had just transferred onto that track from Track No. 5, and were waiting for the Clamshell and Idler Car to pass before they began working again. He stated that although he saw the Clamshell approach, no one had warned him that it was coming. He stated that he did not hear the Clamshell's warning horn. He testified that he turned his head for a moment, and when he looked back, the Claimant was on the ground next to the Idler Car.

Mr. Lusk, a Machine Operator, was driving the Clamshell that day. He stated that he was backing up at a speed of less than five miles per hour. He testified that he could not see the track to the north because he was sitting on

the south side of the Clamshell, and the Idler Car was blocking his view. He testified that his flagman, Mr. Martin, who was standing at the rear of the Idler Car never gave him a stop signal. Mr. Lusk testified that he sounded a warning (three short blasts of his horn) several times. He stated that he stopped the Clamshell because he was not able to clear a "tie handler". He then discovered that the Claimant had been struck.

Mr. Boone, Assistant Roadmaster, testified that he had warned the men in the gang that the Clamshell was approaching. He stated that he had gone some 30 feet east (away from the Claimant, the scarifiers and the approaching Clamshell) to assist the operator of a tie crane. Mr. Boone also testified that he had heard the Clamshell's warning horn several times.

On June 15, 1983, the Claimant was suspended 30 days for violating Safety Rule 1051. On July 26, 1983, the Organization filed a claim on his behalf. After a series of appeals, Mr. Steele, Assistant Vice President - Labor Relations, denied the claim on December 8, 1983.

The issue in this dispute is whether the Claimant's 30-day suspension was for just cause.

The position of the Organization is that the Carrier failed to prove that

the Claimant was guilty of violating the safety rules. The Organization argues that the Clamshell driver never gave a warning, so the Claimant did not know that equipment was approaching on Track No. 5.

The position of the Carrier is that the Claimant received a fair hearing, during which it was shown he was guilty of violating the safety rule. The Carrier argues that the discipline assessed was justified.

Safety Rule 1051 provides: "Employees on or about tracks, must be alert, watchful and keep out of danger, exercising care to avoid injury to themselves and others. Nothing in these rules is to be construed as relieving any employee from performing full duty in this respect.

The Claimant stated that Mr. Boone, while standing directly across the tracks, ordered him to step back so a scarifier and tie crane could pass. However, this story is contradicted by Mr. Boone, who testified that he was 30 feet away at the time of the accident. Mr. Thomas, who was near the Claimant stated that he did not see or hear Mr. Boone give the Claimant an order to step back.

Furthermore, the Claimant's testimony that the scarifier and tie crane were backing up to repair a tie is contradicted by all other witnesses. Both Mr.

Boone and Mr. Thomas stated that the tie gang had not even began work on that track. The scarifiers and the tie crane had backed up so that the Clamshell could pass, not for the reason the Claimant gave.

The Claimant testified that he did not hear the Clamshell's warning horn. He is supported by Mr. Thomas, who noted that there were other machines operating at the time, making it difficult to hear. However, Mr. Lusk testified that he gave the warning signal repeatedly, and Mr. Boone, who was the witness who was farthest from the Clamshell, testified that he could hear the horn.

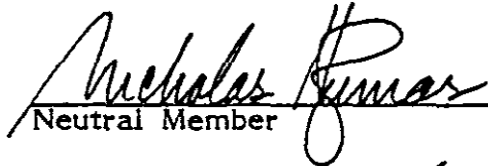
The Board is reluctant to give any credibility to the Claimant's testimony concerning the circumstances involved in his injury. None of the other witnesses saw exactly what happened. Therefore, the only information the Board has is that the Claimant stepped backwards across the six-foot area between tracks and was struck from behind by the Idler Car. He was not told to step back. He did this on his own. From this information, the Board can only conclude that the Claimant was not "alert" and "watchful" and that he did not exercise care to avoid injury, as required by Safety Rule 1051.

The Claimant suffered painful injuries for his failure to obey Safety Rule 1051. But the Carrier has added a 30-day suspension to these injuries. The Board recognizes that the Carrier needs to encourage its employees to obey the

safety rules, and must discipline those who do not. However, it is the opinion of the Board that, in this particular situation, a 30-day suspension of an employee, whose violation of the Safety Rule resulted in an injury to only himself, is excessive. The Claimant's suspension shall be reduced to 15 days.

AWARD

The Claimant's suspension shall be reduced from 30 days to 15 days, with seniority unimpaired and with pay for time lost.



Neutral Member



Carrier Member



Organization Member

DATE:

1/13/86