

PUBLIC LAW BOARD NUMBER 3530

Award Number: 36

Case Number: 36

PARTIES TO DISPUTE:

NORFOLK AND WESTERN RAILWAY COMPANY

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claims of B.C. Wright and R.L. Duffer for pay for 15 days with vacation and seniority rights unimpaired.

FINDINGS

This dispute involves the conduct of the two claimants on August 22, 1983. On August 23, they were each assessed 15-day suspensions for their roles in the incident. The Organization requested a hearing on their behalf, and it was held on September 2, 1983.

The hearing revealed that Claimant Wright, an Extra Force Foreman, was taking his gang to the area of Milepost 104 to continue work that they had been doing in that vicinity.

The Claimant's crew consisted of three pieces of machinery. Tamper 10901 was operated by Mr. Lyle. Claimant Wright was a passenger. It was at the front of the three vehicles. Claimant Duffer was operating Tamper 10781, which was the middle vehicle.

As the vehicles approached Milepost 104, Claimant Wright ordered Mr. Lyle to stop so that he could determine where work would begin. Claimant Duffer's tamper then collided with Mr. Lyle's tamper. Mr. Lyle's tamper was damaged, and had to be taken out of commission.

Claimant Wright stated that he had told several members of his gang that they would begin working somewhere near Milepost 104. He could not recall if he had informed Claimant Duffer or not. He testified that the gang was travelling at about ten miles per hour, but had to slow down several times during the trip. Claimant Wright stated that he observed Mr. Lyle gave a warning signal prior to stopping.

Mr. Lyle testified that when he prepared to stop near Milepost 104, he flashed his lights several times. He added that this was the signal that the gang would recognize as a warning from a vehicle about to stop.

Claimant Duffer testified that when the gang left Ford, Virginia that

morning, no one had told him where they were planning to stop. He was aware that it would be between Mileposts 101 and 105. He testified that when he approached a crossing just east of Milepost 104, he noticed that the feet of his tamper were dragging on the crossing. He stated that he adjusted his work heads up, and while still moving, he examined them, to ensure that they were in a locked position.

He testified that he looked up and checked the vehicle behind him to make sure it was not too close. He stated that he then looked forward and realized that he was about to collide with Mr. Lyle's tamper. He stated that, although he was only travelling at 3 or 4 miles per hour, he was unable to stop. He added that he never saw Mr. Lyle give a warning signal. Claimant Duffers acknowledged that the collision could have been avoided if he had stopped on the crossing when adjusting his workheads.

Both Claimants testified that they had later heard that Claimant Duffer's Tamper had needed to have its brakes repaired. Claimant Wright was told by Mr. Agee, a Mechanic, that two brake cylinders were malfunctioning.

Mr. Porter, Roadmaster, testified that he suspended the Claimants for their roles in the collision. He added that Claimant Wright's suspension was for

a failure to take the necessary precautions to let Claimant Duffers know he was stopping.

On September 21, 1983, the Carrier notified the Claimants that the suspensions had been upheld. On November 3, 1983, a claim was filed on their behalf. After a series of appeals, the Claim was denied by Mr. Steele, Assistant Vice President - Labor Relations, on May 7, 1984.

The issue in this dispute is whether the 15-day suspension of each Claimant was for just cause.

The position of the Organization is that Claimant Wright was not operating either tamper, and should not be held responsible for the collision. The Organization also maintains that Claimant Duffer was not responsible either, because his brakes may have malfunctioned.

The position of the Carrier is that the two Claimants received a fair hearing during which it was shown that their negligence caused the collision. The Carrier points to the fact that Claimant Wright did not notify Claimant Duffer of where he was planning to stop as a sign of negligence, which led to the collision. The Carrier also maintains that Claimant Duffer was negligent in operating his tamper.

It appears that Claimant Wright did not inform Claimant Duffer of his plans to stop near Milepost 104. It is true that he ordered Mr. Lyle to stop near Milepost 104. But, Mr. Lyle flashed his lights as a warning to the vehicles behind him. Claimant Wright's conduct as a foreman did not cause this collision.

Furthermore, Claimant Wright was not operating either tamper at the time of the collision. It could not be said that he was negligent in operating a vehicle. It is the opinion of this Board that Claimant Wright was not responsible for this collision. His suspension was not for just cause.

However, Claimant Duffer was operating the tamper that crashed into and damaged Tamper 10901. He testified that he never saw a warning signal, but also admitted that he was not looking at the track at all times. He stated that he was never told that the crew was planning to stop near Milepost 104. But, he was aware that the gang would stop somewhere between Mileposts 101 and 105.

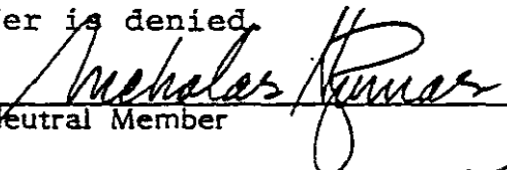
Therefore, Claimant Duffer knew the tampers would have to stop soon, yet he took his eyes off the track without stopping. He admitted that he should have stopped when he checked his work heads. If he had, this collision would not have occurred.

The Carrier, in order to discourage careless and negligent behavior, must be able to discipline those workers who violate safety rules or damage equipment. It is the opinion of this Board that the Carrier had just cause to suspend Claimant Duffer for causing this collision.

AWARD

The 15-day suspension of Claimant Wright shall be stricken from his personnel file, with seniority unimpaired and compensation for time lost.


The claim of Claimant Duffer is denied.



Neutral Member



Carrier Member



Organization Member

DATE:

1/13/86