

PUBLIC LAW BOARD NUMBER 3530

Award Number: 60

Case Number: 60

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Extra Force Foreman, D. L. Pettis, Rt. 1, Box 456-A, Crewe, VA 23930 was assessed a 15 day suspension for alleged responsibility in connection with collision between Caboose 518555 and Tamper 11250, resulting in damage to equipment and personal injury. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request payment for the 15 day suspension with seniority and vacation rights unimpaired.

FINDINGS

Claimant was employed by Carrier as an Extra Force Foreman. By letter dated September 6, 1984, Claimant was notified to attend an investigation concerning charges that he acted in a negligent manner resulting in a collision while on duty on August 30, 1984. An investigation was held on September 24, 1984. By letter dated October 12, 1984, Claimant was given a 15 day suspension.

The issue to be decided in this dispute is whether Claimant was disciplined for just cause under the Agreement.

The position of the Organization is that Claimant was wrongly suspended for his involvement in the collision, contend-

ing that a malfunction in the braking system of Claimant's machine was the cause of the accident and that Claimant was therefore wrongly held responsible for the accident. The Organization cites the testimony of Repairman R. G. Wise that the braking system in question was not working at full capacity due to a previous faulty repair. The Organization further cites the testimony of Engineer G. F. Hadley that Claimant requested and saw that repairs were made to the braking system prior to the accident. The Organization argues that this testimony establishes that Claimant was not at fault for the accident. The Organization further argues that Claimant's "plugging off" of one of the brakes was not negligent, but was rather standard procedure of a defect of that type and necessary to keep the machine operating. The Organization cites Wise's testimony to establish that Claimant's actions were proper. The Organization maintains that Carrier failed in all respects to establish a causal link between Claimant's performance and the accident.

The position of the Carrier is that Claimant was properly disciplined for operating his machine in a negligent manner on the date in question, asserting that the evidence produced at the investigation clearly established Claimant's responsibility for the accident. Carrier cites Claimant's testimony that he admitted knowledge of the braking defect and that he tried to correct the defect by "plugging" one of the brake cylinders. Carrier argues that Claimant's knowledge of the defect and his

continued operation of the machine at regular speed indicates a failure to follow proper operation procedure. Carrier cites the testimony of Wise that the braking system was sufficient to stop the machine if it were operating at 15 miles per hour, and contends that Claimant's excuse regarding brake malfunction therefore lacks factual basis. Carrier maintains that the evidence as a whole establishes that Claimant was responsible for the safe operation of the machine and that his failure to do so was the primary cause of the accident.

After review of the record, the Board finds that a five day suspension was the appropriate remedy.


It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

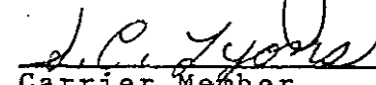
Carrier has established Claimant's partial responsibility for the accident. The evidence presented indicates that Claimant was aware of the defect in the braking system and that he continued to operate the machine despite the defect. The evidence further suggests that Claimant should have been able to stop his machine short of the collision point had he been operating the machine at a proper speed in light of the braking defect. We therefore find that Claimant was at fault regarding the accident in question and that his actions constituted negligence.

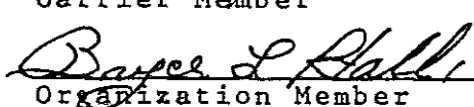
Notwithstanding the above, we find that the discipline imposed was excessive. Although Claimant's negligence was partially responsible for the accident, substantial evidence indicates that unforeseen defects existed in the braking system about which Claimant was not aware. While we do not excuse Claimant's behavior, we find that in light of the circumstances, a 15 day suspension was excessive. We therefore find that the discipline imposed should be reduced to five days, a penalty reasonably commensurate with the offense in light of all the circumstances.

AWARD

Claim disposed of per Findings herein.



Neutral Member


Carrier Member


Organization Member

DATE: 1-29-88