

PUBLIC LAW BOARD NUMBER 3530

Award Number: 68

Case Number: 68

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Extra Force Foreman, G. W. Lester, Rt. 3, Box 526, Mohawk, WV 24862, was assessed a 60 day actual suspension for alleged responsibility in connection with collision of Extra 542 West and MW equipment resulting in damage to equipment. Claim was handled in accordance with the Railway Labor Act and agreement provisions. Employees request pay for time lost and all rights unimpaired.

FINDINGS

Claimant was employed as an Extra Force Foreman. By letter dated November 29, 1984, Claimant was notified to attend an investigation concerning his responsibility for a collision occurring on November 27, 1984. An investigation was held on December 17, 1984. By letter dated January 4, 1985, Claimant was assessed a 60 day suspension.

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

The main thrust of the Organization's position is that Claimant was not responsible for the collision, that Claimant merely relied on Foreman A. Martin's judgment that it was safe to assume that the east end switch had

been properly lined. The Organization further contends that Claimant properly relied on Martin's opinion since he was unfamiliar with the area where the collision occurred. The Organization therefore argues that Claimant should not have been held responsible by Carrier for the collision.

Carrier contends that the investigation clearly established that Claimant, along with other members of his crew, was responsible for the collision. Carrier cites Claimant's testimony that he never checked the east end switch to ensure whether equipment was clear of the track or that the switch was properly lined. Carrier further cites Claimant's testimony that he spoke with Martin and that they mutually decided to not check the track. Finally, Carrier cites Claimant's testimony that he admitted responsibility for ensuring that the track in fact was clear. Carrier argues that Claimant's testimony, along with that of Martin, establishes that the two employees assumed that the track would be clear and switch properly lined, in clear violation of their responsibilities. Carrier further argues that this assumption was directly responsible for the collision, causing serious financial hardship for Carrier. Finally, Carrier cites the Organization's position in Case No. 64 before this Board, where the Organization argued that the clearing of the track in question was "the responsibility of the Foreman Lester." Carrier maintains that the Organization's position in Case No. 64 confirms Claimant's guilt.

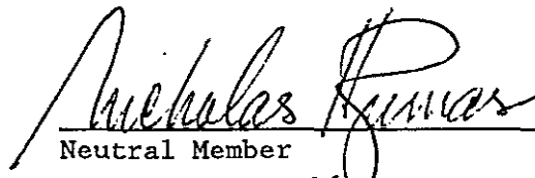
After review of the record, the Board finds that the Organization's claim must be denied.

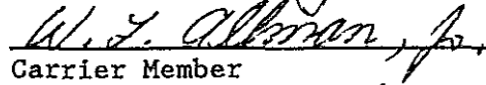
It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

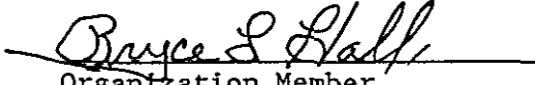
We find that Carrier has substantiated the charge against Claimant through sufficient evidence. Claimant's testimony established that he was responsible for ensuring that the track in question was clear and that the switches were properly lined. He also admitted that he failed to do so. Claimant's reliance on Martin's judgment in no way excuses his actions, since he was admittedly jointly responsible for ensuring that conditions were safe on the track. There is little doubt from the evidence of record that other employees, including Martin, were also negligent in performing their duties. However, the evidence is clear that Claimant was similarly negligent and responsible in part for the collision. In light of Claimant's responsibility, and the serious consequences resulting from his negligence, we find that Carrier acted within its discretion in assessing the discipline imposed against him.

AWARD

Claim denied.

  
Neutral Member

  
Carrier Member

  
Organization Member

DATE: 1-29-88