

PUBLIC LAW BOARD NUMBER 3530

Award Number: 72

Case Number: 72

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Backhoe Operator, W. A. Cowell, 817 Oak Avenue, Norfolk, VA 23502, was assessed a 30 day deferred suspension and 5 day actual for alleged responsibility in collision with backhoe and railroad car and a personal injury. Claim was handled in accordance with the Railway Labor Act and agreement provisions. Employees request record be cleared and pay for all time lost.

FINDINGS

Claimant was employed as a Backhoe Operator at Norfolk, Virginia. By letter dated May 23, 1984, Claimant was notified to attend an investigation concerning charges that he was responsible for an accident occurring on May 21, 1984. An investigation was held on June 6, 1984 and continued on June 14, 1984. On July 3, 1984, Claimant was given a 30 day deferred suspension and a five day actual suspension.

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

Initially, the Organization contends that Carrier violated Claimant's procedural rights by providing incorrect information in the original letter

of charge dated May 23, 1984, and the subsequent letter of charge June 1, 1984. Specifically, the Organization cites the fact that on both letters Carrier listed the date of incident as May 22, 1984, when in fact the incident at issue occurred on May 21, 1984. The Organization argues that this inaccuracy prejudiced Claimant's ability to prepare an effective defense and that the discipline imposed should therefore be invalidated on procedural grounds.

Carrier contends that evidence produced at the investigation established clearly that Claimant was responsible for his backhoe being struck by a railcar on May 21, 1984. Carrier maintains that Claimant negligently operated his backhoe on Track No. 6, erroneously assuming that that track was closed. Carrier cites the testimony of Foreman Ratliff that he specifically told Claimant that only Tracks 7 through 11 would be closed and that he should stay off Track No. 6. Carrier further cites the testimony of Pipefitters Rogers, Goode and Williams, which corroborated Ratliff's testimony. Carrier maintains that the testimony clearly established that Claimant was put on notice regarding Track No. 6 and yet took it upon himself to work on that track without authorization.

Carrier further contends that the typographical errors contained in the letters of charge did not unduly prejudice Claimant's ability to prepare a defense. Carrier maintains that Claimant was fully aware of the incident to which the charges related and was fully prepared at the hearing to present defense.

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.

Initially, we reject the Organization's procedural argument. There is no factual dispute concerning the typographical errors in the letters of charge. However, we find no evidence that Claimant was unable to prepare an effective defense or was unaware of the incident resulting in the charges. To the contrary, it appears extremely unlikely that the erroneous date confused Claimant in any way regarding the charge at issue, since he was involved in only one collision.

Regarding the substantive charge, we find that Carrier has sustained the charge against Claimant. The testimony of Ratliff, along with that of the Pipefitters, establishes that Claimant was put on notice that Track No. 6 was off limits. The evidence suggests that Claimant either intentionally disregarded those instructions or negligently failed to heed them. In either case, his unilateral decision to work on Track No. 6 created the situation resulting in the collision. In light of the circumstances, we find that Carrier acted within its discretion in imposing the suspension against Claimant.

AWARD

Claim denied.

Nicholas Rinas
Neutral Member
W. Z. Almon, Jr.
Carrier Member
Royce L. Hall
Organization Member

DATE: 1-29-88