

PUBLIC LAW BOARD NO. 5724

Case No. 21

Award No. 21

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

On behalf of Conductor R. J. Delprince we ask that (1) the discipline assessed, fifteen (15) days actual suspension be rescinded, (2) his record be completely cleared of any wrongdoing in connection with the charges lodged, (3) he be paid for all time lost for the period of his suspension, for attending the investigation and for attending any subsequent appeal hearings and arbitration proceedings, (4) such reimbursement and compensation be properly credited and distributed so that retirement taxes and credits are properly withheld and credited for each day of service he would have worked had he not been assessed discipline and required to attend the investigation, (5) his T&E Vacation Credit bank be increased to reflect days he would have worked had he not been assessed discipline and required to attend the investigation, (6) he be reimbursed for all expenses incurred as a result of his attending the investigation and any subsequent appeal proceedings, and (7) he be paid on an earnings lost basis to re-qualify on any operating rules and instructions as well as the physical characteristics of any territory lost as a result of this absence from duty.

OPINION OF BOARD:

This is a dispute involving an employee who was allegedly observed walking on the heads of ties, fouling the track, and placing himself at risk while performing his work as Conductor at Binghamton, New York. On the date of the incident, September 18, 2001, Claimant was working as Conductor on Train 205 when, it was stated, he stopped a yard movement, threw a switch, and returned to the rear of his train by walking between Mains 1 and 2, on the heads of ties.

Following the observation made by an official from his post in the Office Tower, Claimant was cited for walking on the butts of track between Main 1 and 2, granted a trial, and found guilty as charged.

He was assessed fifteen days actual suspension, which is the subject of the present claim.

The Organization insists there is no real proof that Claimant violated Rule GR-32, which prohibits fouling a track by the placement of an individual or equipment in proximity to a track so that the individual or equipment could be struck by a train, locomotive or other railroad equipment. The Petitioner asserts Claimant testified he had communication with the Southern Tier Train Dispatcher controlling this territory and this particular movement; furthermore, he had a sight vision for at least one hundred car lengths, so in effect, he was working in compliance with Rule GR-32.

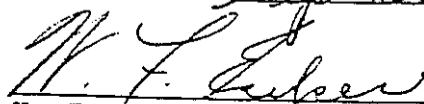
Our review of the record conforms with the presentation made by Petitioner on the issue of lack of substantial evidence. We do not believe the Carrier has borne its burden of proving that Claimant's actions on the date in question were in violation of the Operating Rules, particularly General Rule 32. We will sustain the claim for recession of the fifteen day suspension and deny the remainder of the claim.

FINDINGS: The Agreement was violated.

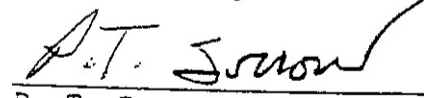
AWARD: Claim sustained for reversal of the fifteen day suspension.

ORDER: The Carrier will place the award into effect within thirty (30) days of the effective date.

Dated in Norfolk, Virginia, this 30th day of September, 2002.


W. F. Euker, Neutral Member

 10-29-02
S. R. Budzina, Carrier Member


P. T. Sorrow, Organization Member

Carrier File: JC-BUF-01-132
Organization File: JC-BUF-01-132