

PUBLIC LAW BOARD NO. 6394

AWARD NO. 33

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
(CONSOLIDATED AND PENNSYLVANIA FEDERATIONS)

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of F. R. Blackburn for reinstatement to service following his dismissal as a result of a formal investigation held on April 17, 2007, in connection with his improper performance of duty in handling a chain binder while attempting to tie down a Tie Remover and Inserter Machine.

(Carrier File MW-PITT-07-06-SG-113)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

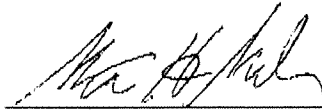
Claim disposed of as follows:

On March 8, 2007, Claimant was working as a Laborer on Gang TS-31. He was using a spring-type chain binder to secure equipment to a flat car. The chain binder sprung back and struck him in the face, breaking his jaw. The Organization argues that the mere fact of a personal injury does not establish culpability for the injury and cannot be the basis of discipline. We agree, but the record establishes much more than the mere fact that Claimant was injured.

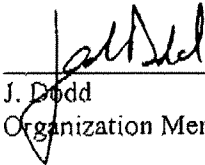
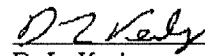
The record establishes that for safety purposes, two employees are required to secure a spring-type chain binder. However, Claimant took it upon himself to try to secure the binder alone. As Claimant indicated in his Personal Injury Report, "[E]vidently I wasn't as strong as I thought I was." The evidence further indicates that the safe way to secure a spring-type chain binder is to pull it closed so as to keep the employee out of the line of fire should the binder spring back. Claimant, however, pushed the binder closed, placing his face in the line of fire, resulting in his injury.

The record further establishes that Claimant had been trained on the proper way to use the chain binders and had viewed a video reinforcing that training before he began his duties on the date in question. The evidence of Claimant's culpability is overwhelming. We hold that Carrier proved the charge by substantial evidence.

Claimant's offenses were very serious. They subjected himself to serious personal injury. Indeed, Claimant is lucky that his injuries were not even more severe. Neither Claimant, nor any employee, may second guess safe operating procedures and assume that they are able to perform their tasks in other than the appropriate way. However, under the circumstances, particularly considering Claimant's thirty-one years of service, we find that the penalty of dismissal is excessive. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service. We emphasize that Claimant should not read this Award as diminishing the seriousness of his offense or the importance of working safely.



M. H. Malin
Chairman and Neutral Member


J. Dodd
Organization Member
D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on January 19, 2008