

SPECIAL BOARD OF ADJUSTMENT 1049

CASE NO. 159

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier's File: MW-GNVL-06-06-SC-054)

Statement of Claim:

Claim on behalf of J. D. Lusk for exoneration with seniority, vacation and all other rights unimpaired and pay for all time lost for the 30 day suspension assessed as a result of the formal investigation on March 3, 2006, in connection with improper performance of duty and failure to follow instructions concerning untying chain binders on the T&S 20 equipment flats on February 7, 2006, and making conflicting statements in connection with the reporting of an on-duty injury on that date.

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 under Public Law 89-456 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.

AWARD

After thoroughly reviewing and considering the transcript and the parties' presentation, the Board finds that the claim should be disposed of as follows:

BACKGROUND

J. D. Lusk, the Claimant herein, entered the Carrier's service on August 8, 2005 as a Laborer. On February, 2006, the Claimant was working his regular assignment on a Tie and Surfacing Gang, TS-20. The instant matter concerns the propriety of the Claimant's failure to properly perform his duties and follow instructions while untying chain binders and making conflicting statements in his

reporting of an on-duty injury and the Carrier's determination to assess the Claimant a 30 day actual suspension as a result of his alleged negligence.

DISCUSSION

Initially, this Board notes that it sits as a reviewing body and does not engage in making *de novo* findings. Accordingly, we must accept those findings made by the Carrier on the Property, including determinations of credibility, provided they bear a rational relationship to the record.

Following the investigation held on March 2, 2006, the Hearing Officer advised the Claimant by letter dated March 21, 2006 that he was assessed a thirty (30) day actual suspension. The Organization took exception to the dismissal assessed and initiated an appeal dated April 17, 2006.

The record evidence reveals that on the morning of February 6, 2006, the TS-20 Gang, of which the Claimant was a part, began unloading work equipment at their new worksite and that the Claimant, among others, was assigned to release chain binders that secured equipment to the flatcars for transport purposes. TS-20's Supervisor instructed the Gang Foreman to advise his men to only undo the chain binders on the left-hand side of the equipment cars. However, contrary to the instruction from his supervisor, the Claimant climbed on-board one of the cars and began unlocking some of the binders that were not securing equipment. Notwithstanding the fact that the specific binder the Claimant was unlocking was put together "very loosely and wire tied down", the Claimant maintained that as he was unlocking this particular binder, the tension on the chain caused the buckle to open, fly through the air, and strike him.

With respect to the allegations regarding the manner in which the Claimant reported the circumstances of his on-duty injury, the record established that the Claimant failed to consistently describe precisely how he had positioned himself when he was unlocking the binder that caused his injury. Nor was the Claimant able to offer any explanation as to how the loosely tied binder allegedly flew open and stuck him in the leg, or to otherwise provide sufficient detail to support the extent of his injury.

The record also reveals that on the morning of February 6, 2006, and prior to the injury giving rise to the instant matter, the Claimant attended a briefing where he, as well as the rest of his Gang, were instructed on the potential hazards that occur when unloading equipment, such as avoiding "pinch points" as well as placing one's body in the "line of fire." In addition, the record reflects that the Claimant had previous experience and personal training in this regard, having been with this Gang for some time preceding his accident and having participated in untying equipment from rail cars on several occasions.

Given the foregoing, the Board concludes that the Carrier sustained its burden of proof by establishing, through substantive credible evidence that the Claimant did, in fact, fail to properly perform his duties and follow reasonable instructions while untying chain binders. The Carrier also sustained its burden of proof in establishing that the Claimant made conflicting statements in his report of his on-duty injury. This Board is well aware of the degree of care under which the Carrier is required to operate, particularly in matters of safety. Accordingly, the Carrier is well within its right to insist that employees perform their duties and responsibilities in a safe manner, consistent with the training provided by the Carrier. Following a careful review of the record in this matter, it is clear to this Board that the Claimant fell short of this expectation. Accordingly, the Board finds sufficient evidence in the record demonstrating that on February 6, 2006, the Claimant failed to perform his task assignment with the expected diligence and care reasonably expected by the Carrier.

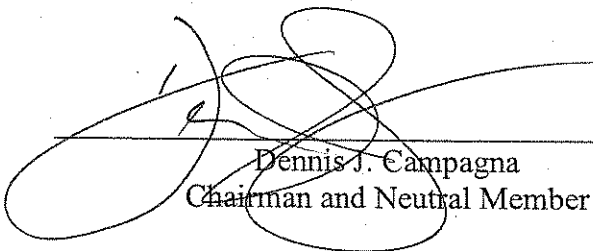
With respect to the Claimant's failure to file an accurate report, it is undisputed that the Carrier relies upon honest and accurate reports as a learning tool in its goal of accident prevention. The Claimant's failure to provide the Carrier with an accident report which accurately described the circumstances giving rise to his injury deprived the Carrier of the opportunity to learn from the Claimant's unfortunate experience.

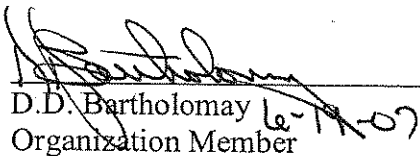
Given the foregoing facts and circumstances in this matter, the Board finds the imposed 30 day actual suspension neither arbitrary nor capricious, particularly given the nature of the offense and the Claimant's short tenure of service.


Finally, the Board notes the Organization's claim that the charge in the instant matter was vague, general and not sufficiently precise. Respectfully, the Board finds to the contrary, concluding that the charge was sufficiently precise so as to inform the Claimant of the nature of the incident giving rise to the charge as well as providing the Organization with the opportunity to prepare its defense.

CONCLUSION

The Claim is denied.


Dennis J. Campagna
Chairman and Neutral Member


D.D. Bartholomay
Organization Member


D.L. Kerby
Carrier Member

Dated May 31, 2007, Buffalo, New York