

SPECIAL BOARD OF ADJUSTMENT No. 541

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM:

1. The Carrier issued an actual suspension of 30 days to Assistant Section Foreman Leo H. Zakowski on charges for an alleged violation of Rule 104 on October 9, 1963, without having proved such charges at the Investigation held on October 21, 1963.

2. Assistant Track Foreman Leo H. Zakowski be now reimbursed for the wage loss suffered by him as a result of this improper suspension from the Carrier's service, and that his record shall be cleared of this entry of discipline.

FINDINGS:

A McWilliams Tamper was seriously damaged on October 9, 1963, when it was not stopped in time to prevent its collision with a yard engine at Niagara Falls, New York. Claimant was riding on the Tamper at the time of the accident and, after a hearing had been held in the matter, received a thirty-day suspension for his part in the incident.

That every employee owes an affirmative duty to protect his employer's equipment and avoid accidents is entirely clear. It is equally well settled that the Carrier must be accorded considerable latitude in the matter of assessing disciplinary action, particularly where, as here, an accident occurred that resulted in substantial property damage and danger to personnel. Giving all due weight to these principles and Claimant's presence on the Tamper, it nevertheless remains that, in our opinion, the record is far too sketchy and inadequate to establish that Claimant was negligent or otherwise at fault.

It is essential that findings of guilt be supported by affirmative evidence and since the proof is insufficient in that regard, this claim must be sustained.

AWARD:

Claim sustained.

Dated at New York, N. Y., this 10th day of March, 1965.

/s/ Harold M. Weston
HAROLD M. WESTON, REFEREE

/s/ Arthur J. Cunningham
ORGANIZATION MEMBER

/s/ R. A. Carroll
CARRIER MEMBER