

SPECIAL BOARD OF ADJUSTMENT 1048

Award No. 119
Case No. 119

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. The dismissal of Tamper Operator J. P. Traub for his alleged violation of Operating Rule 814 on September 7, 2001 when the tamper he was operating came in contact with a ballast regulator was without just and sufficient cause and excessive punishment (Carrier's File MW-FTW-01-75-LM-333).
2. Tamper Operator J. P. Traub shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

This Board, upon the whole record and all of the evidence, after hearing, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended,; and
2. That the Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction over the parties and the subject matter involved in this dispute.
3. This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

OPINION OF THE BOARD:

The Claimant began his employment on May 20, 1976 and served as a Machine Operator on September 7, 2001 near Millville, Indiana. The Claimant was operating certain equipment when the equipment collided with another piece of equipment. Rule 814 requires the

operator of certain equipment to be prepared to stop within half the range of vision of other equipment. The record is uncontroverted that the Claimant failed to comply with Rule 814.

The Claimant's work record includes 27 letters of warning for ceratin rules infractions; suspensions of 5 days, 10 days, 20 days, and 45 days; and two prior dismissals that were converted into reinstatements without back pay.


The most recent reinstatement occurred by Public Law Board No. 1837, which had reviewed the prior dismissal of the Claimant for alleged theft of the Carrier's property, had reinstated the Claimant without back pay, and had treated the period that the Claimant was off as a lengthy disciplinary suspension for his wrongdoing. The Public Law Board specifically determined that: "The Claimant will be given this last chance to show that he is a good employee." (BMW v. Norfolk & Western Railway Company, P.L.B. No. 1837, Case No. 126 at 4 (May 18, 2001) (Meyers, P., Neutral).)

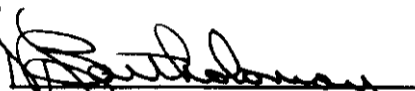
The collision that the Claimant caused in the present case in violation of Rule 814 combined with the extremely poor prior work record of the Claimant that included the recent last chance reinstatement of the Claimant by Public Law Board No. 1837 furnished the Carrier with just and sufficient cause to terminate the Claimant. The Award shall so reflect.


AWARD:

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

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Organization Member
Dated: 10/28/02


D.L. Kerby
Carrier Member