

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 167

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of D. E. Caton requesting reinstatement to service with pay for all time lost following his dismissal as a result of a formal investigation held on December 20, 2007, in connection with his failure to follow instruction and improper performance of duty in that he attempted to unload spikes by manually lifting a spike keg on November 27, 2007, at approximately 11:35 a.m. in Paoli, Pennsylvania.

(Carrier File MW-HARR-07-31-SG-446)

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.

AWARD

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

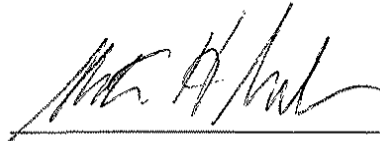
The record reflects that on November 27, 2007, Claimant manually lifted the end of a spike keg to dump out the spikes, lost his balance and was injured. The spike keg weighed approximately 200 pounds. The record further reflects that on October 30, 2007, the Process Engineer observed Claimant manually lifting a spike keg, stopped the operation and demonstrated the proper way to empty spike kegs using a gantry crane and tongs to tip the keg on its side. On November 5, 2007, the General Division Engineer also demonstrated to Claimant the proper way to empty a spike keg.

Claimant testified that he had to manually lift the spike keg because the gantry crane was not functioning properly. Claimant maintained that because of the defect, the Process Engineer was unable to demonstrate using the gantry crane but instead explained the proper procedure verbally. The record reflects that the gantry crane boom did not clear the roof mount on the right side of the machine. But testimony revealed that this problem only affected the specific location on the right side of the machine where the spikes would be dumped using the crane; it did not prevent the use of the crane to dump the spikes. Furthermore, at the time of his injury, Claimant was dumping spikes on the left side of the machine and there was no dispute that the crane could swing past the roof mount on that side.

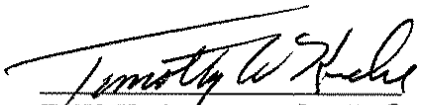
Claimant insisted that a Machine Operator who was not present at the investigation could corroborate Claimant's testimony. The Hearing Officer located the Machine Operator and took his testimony by telephone. The Machine Operator did not corroborate Claimant in any respect. The decision on the property to credit the testimony of the Process Engineer and the General Division Engineer and not to credit Claimant's testimony was reasonable and we defer to it. We conclude that Carrier proved the

charge by substantial evidence.

At the time of the incident, Claimant had been in service for just over two months. We find no mitigating factors in the record and are unable to say that the penalty of dismissal was arbitrary, capricious or excessive. Accordingly, the claim is denied.



M. H. Malin
Chairman and Neutral Member


T. W. Kreke 12-17-08
Organization Member
D. L. Kerby 12/17/08
Carrier Member

Issued at Chicago, Illinois on November 30, 2008