

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 189

Parties to Dispute:

BROTHERHOOD OF MAINTENCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

“Claim of the System Committee of the Brotherhood that:

1. The dismissal of machine Operator C. C. Cline for violation of Safety and General Conduct Rule GR-3 in connection with improper performance of duty is arbitrary, capricious and an abuse of Carrier discretion (Carrier’s file MW-HARR-09-26-SG-441)
2. As a consequence of the violation referred to in Part 1 above, Claimant Cline shall be granted remedy in accordance with Rule 30 of the Agreement.”

Upon the whole record and all the evidence, after hearing, the Board finds 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 precedent in any other case.

AWARD

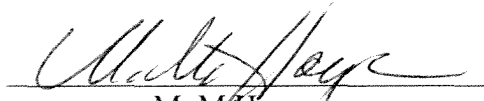
After thoroughly reviewing and considering the record and the parties’ presentations, the Board finds that the claim should be disposed of as follows:

The Claimant was operating his machine on September 17, 2009. He was a qualified machine operator before the events of September 17, 2009 and had established Machine Operator seniority as of November 16, 2008. He testified he did not recollect receiving formal training on the machine but the record indicated he was qualified because he spent the required number of hours working on the machine. According to the Claimant’s testimony, he had placed his part of his foot was on top of the kickplate (Transcript, page 28). That fact is undisputed. This position of the foot meant that the claimant’s foot was in line of the work head. Because of this, he incurred an accident involving three broken metatarsals and a dislocated toe, a fact which is also undisputed.

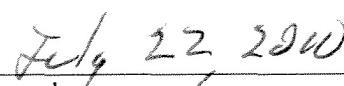
There were a variety of mitigating circumstances in this case that the Board has taken into account. For example, there is evidence that the machine in question had faulty wiring, that the Claimant did not receive adequate training, and that the machine was operated in an inconsistent manner (Transcript, page 31). However, there was insufficient evidence to sustain any of these as the cause of the accident. Besides the instant case, the claimant has no other safety violations.

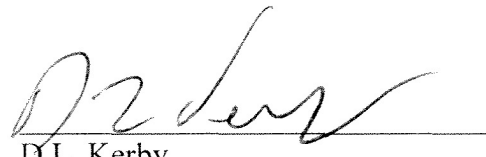
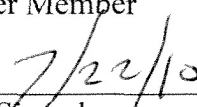
Considering all the circumstances we conclude that the Carrier had cause to discipline the Claimant, since the claimant did violate the safety protocol in the placement of his foot on the machine. However, we find that the dismissal was excessive. The Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service. For a period of six months commencing with the date Claimant is reinstated, he shall be disqualified from the machine operator position and shall forfeit his machine operator seniority. Following the six month disqualification period, the Claimant shall be eligible to bid on machine operator position and establish a new machine operator seniority date according to the Agreement.

The claim is sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty days following the date two members of this Board affix their signatures thereto.


M. M. Hoyman
Chairperson and Neutral Member

Issued at Chicago, Illinois on May 28, 2010.


T. Kreke
Employee Member

Date Signed


D.L. Kerby
Carrier Member

Date Signed