

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 153

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf M. R. Jackson for reinstatement to service with seniority, vacation, and all other rights unimpaired and pay for time lost as a result of his dismissal assessed following a formal investigation held on October 11, 2005, concerning: 1) improper performance of duties as a machine operator in connection with a collision between the Anchor Machine RAM 8403 N, pushing an anchor cart, that he was operating and Walking Spiker NS 8608 WH (striking one co-worker who in turn fell into another co-worker and both falling down the embankment into a ditch); 2) failure to promptly report the collision; 3) making false statements in a matter under investigation in alleging that the collision was caused by mechanical problems with the Anchor Machine; and 4) making false and conflicting statements in connection with his report of injury alleged to have resulted from this collision on May 2, 2005.

(Carrier File MW-GNVL-05-05-SG-154)

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' presentations, the Board finds that the claim should be disposed of as follows:


The record reflects that on May 2, 2005, Claimant operated an anchor machine and failed to stop within one-half the range of distance because he was looking down instead of looking ahead. Consequently, Claimant struck a co-worker and subsequently collided with the walking spiker that he was following. The coworker fell into the walking spiker operator causing both to fall down the embankment and into the ditch. The record further reflects that Claimant did nothing to report the incident to supervision, but instead finished his shift and then went to the gang bus; had not a co-worker reported the incident, the matter would not have come to the attention of supervision.

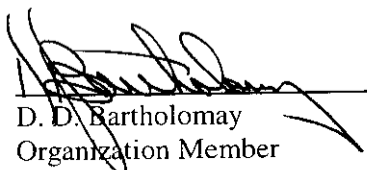
The record further reflects that Claimant made false and conflicting statements concerning the cause of the collision. Claimant initially told his co-workers that the brakes had failed and that he fixed the

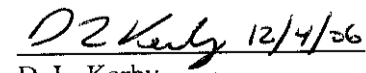
problem by adjusting the brakes. Claimant later told supervision that the travel pedal had stuck. However, a thorough inspection of the anchor machine by a qualified mechanic revealed no mechanical defects.

Finally, the record reflects that Claimant maintained that he did not report the incident because no one had been injured. However, Claimant told the Division Engineer that he had hurt his back when he hit the plywood back of the operator's seat and that he had not struck any of the controls in front of him. Subsequently, Claimant told the Supervisor that he had hurt his chest when he fell forward into the controls. Claimant was transported to the emergency room where x-rays were negative. Claimant offered no medical records documenting his purported injuries. The only medical records Claimant produced related to his diabetes.

We conclude that Carrier proved all of the charges by substantial evidence. Given the seriousness of the misconduct, involving safety violations and multiple acts of dishonesty, and given the aggravated nature of the multiple acts of misconduct, we cannot say that the penalty of dismissal was arbitrary, capricious or excessive. The claim is denied.



M. H. Malin
Chairman and Neutral Member

D. D. Bartholomay
Organization Member

D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on October 30, 2006