

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 188

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of T. B. Cory requesting that he be paid for all time lost as a result of his dismissal following a March 27, 2008 formal investigation concerning improper performance of the duties of a Machine Operator in that the Anchor Spreader that he was operating collided with the Spike Loading Machine on February 25, 2008.

(Carrier File MW-BHAM-08-03-SG-137)

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.

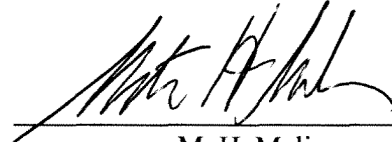
AWARD

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

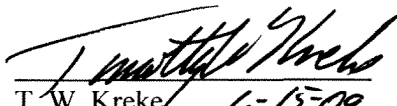
The record reflects that on February 25, 2008, Claimant's gang was heading north with instructions to stop at MP 207.5, stopping short of a bridge. The machines in front of the Anchor Spreader that Claimant was operating all stopped short of the bridge. Claimant, however, failed to stop his Anchor Spreader short of the Spike Loading Machine that was immediately in front of him. The record further reflects that the operator of the Spike Loading Machine was signaling Claimant to slow down.

Rule 814 requires operators of on-track equipment to be prepared at all times to stop within half the range of vision. Claimant clearly violated Rule 814. We hold that Carrier proved the charge by substantial evidence.

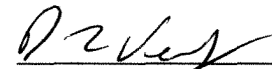
Considering all surrounding facts and circumstances, however, we find that the penalty of dismissal was excessive. Although Claimant had only approximately 2 ½ years of service, his only prior discipline was a letter of warning issued almost two years prior to the incident in question. Carrier shall reinstate Claimant to service with seniority unimpaired but without compensation for time out of service. Claimant shall be disqualified as an Anchor Spreader Operator until such time as he may requalify.



M. H. Malin
Chairman and Neutral Member



T. W. Kreke
Organization Member
6-15-09



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on May 30, 2009