

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 196

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of D. S. Anders that he be paid for all time lost as a result of his dismissal following a January 27, 2009 formal investigation concerning his improper performance of duty as a Machine Operator when the THM 08023 he was operating collided with the rear cart of the THM 03001 operated by K. A. Alexander at Milepost 15.5 DW, in the vicinity of Danville, Virginia on December 15, 2008, and his failure to promptly report this collision.

(Carrier File MW-GNLV-08-43-SG-630)

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:

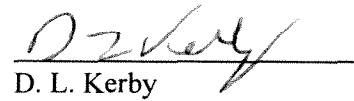
The record reflects that on December 15, 2008, Claimant was trammieing his Tie Handling Machine when he collided with the rear cart of the Tie Handling Machine that he was following. Although Claimant maintained that the brakes were defective, a mechanical check found no defects. It is clear that Claimant failed to comply with Rule 814 which requires being able to stop within half the range of vision. Furthermore, the evidence established that Claimant failed to promptly report the accident to his supervisor. Instead he waited an hour and ten minutes before reporting the accident and then did so only after his efforts to repair the damage to his machine by himself were unsuccessful. We conclude that Carrier proved the charges by substantial evidence.

In the instant case, however, considering all of its peculiar facts and circumstances, we find the penalty of dismissal to be excessive. Claimant shall be reinstated to service but without compensation for time held out of service and he shall forfeit his Machine Operator seniority.


M. H. Malin
Chairman and Neutral Member


T. W. Kreke
Organization Member

Oct. 5, 2009


D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on September 24, 2009