

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 197

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of J. M. Agee for exoneration with seniority, vacation and all other rights unimpaired and pay for all time lost as a result of his dismissal following a formal investigation on January 29, 2009, in connection with his improper performance of duties while repairing his machine on December 18, 2008, which resulted in part of his finger being severed.

(Carrier File MW-GNLV-08-45-SG-632)

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:

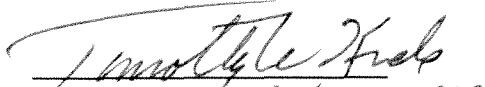
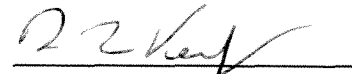
The record reflects that on December 18, 2008, Claimant was one of two Machine Operators assigned to the Nipper Spiker. Claimant and his coworker encountered mechanical difficulties and, after notifying their supervisor, they backed the Spiker out of the way so that it could be repaired. Claimant had noticed that a pin had come loose. He attempted to reinsert the pin in the clevis and his finger ended up in the hole when the hydraulic pressure that was holding the Spiker's gun up leaked and the gun came down, severing the top part of Claimant's finger.

Claimant admitted that he failed to properly lock out and tag out his machine. He maintained that he engaged the mechanism to lock the gun in the raised position but failed to verify that the pin which would hold the gun in the raised position actually engaged. He admitted that apparently the pin did not engage. Claimant also admitted that safety rules prohibited placing a finger in a hole such as the clevis.

Carrier clearly proved the charges by substantial evidence. Claimant clearly was guilty of negligence in failing to follow proper safety procedures and the results were serious. 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 / Oct 5, 2009
Organization Member
D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on September 24, 2009