

SPECIAL BOARD OF ADJUSTMENT NO. 936

Parties
to the
Dispute

:
: Brotherhood of Maintenance of Way Employees :
: :
: vs. :
: :
: Norfolk and Western Railway Company :
: (Lake Region) :
:

Case No. 9
Award No. 9

STATEMENT OF CLAIM

(1) The ten (10) day deferred suspension assessed Trackman Mike J. Okenka for alleged violation of Safety Rule 1051 was without just and sufficient cause and on the basis of an unproven and disproven charge. [File No. MW-BRS-80-30-1].

(2) The dismissal of Trackman Mike J. Okenka for alleged insubordination was without just and sufficient cause. [File MW-BRS-80-30-2].

(3) The ten (10) day deferred suspension shall now be removed from the Claimant's personal record and he shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD

Claimant M. J. Okenka was employed by Carrier as a Trackman on Section 1 in Toledo, Ohio. On July 17, 1980, Claimant was injured while loading cross ties into a bucket of a backhoe. Claimant was charged with violation of Safety Rule 1051. An investigation followed

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and Claimant was assessed a ten-day deferred suspension. This Board has reviewed the record of that incident and is of the opinion that while Claimant was injured, it was not his fault. We are therefore sustaining Claimant's position on the ten-day deferred suspension.

On October 24, 1980, Claimant was instructed to operate the ~~adzer~~^{scr} dozer. Claimant refused to operate the machine unless he was furnished with the proper safety equipment. Claimant was told that the proper safety equipment was with the machine and that he would be supplied with a respirator if he desired one but that he was to run the machine with the required safety equipment until a respirator was obtained. Claimant became embroiled in an argument with his Supervisor and eventually threw down the equipment and left Carrier property.

On November 16, 1980 Claimant was notified that he was dismissed for insubordination and a hearing in the matter would be held on November 18, 1980. The hearing was held as scheduled and Claimant was found guilty of insubordination. A transcript of that hearing has been made a part of the record of this case. A review of that record reveals that Claimant was insubordinate and that discipline was appropriate. This Board can find no basis in this record to overturn or in any way modify Carrier's actions in this case.

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We have explained our position on insubordination in the railroad industry in Award No. 8 of this Board.

AWARD

The claim is denied.

R. E. Dennis
R. E. Dennis, Neutral Member

S. C. Lyons
S. C. Lyons, Carrier Member

H. G. Harper
H. G. Harper, Employee Member

MAY 10 1984