

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38207
Docket No. MW-39472
07-3-06-3-282

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division –
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [suspended for five (5) working days and placed on probation for a period of one (1) calendar year] imposed under date of May 25, 2005 upon Mr. G. Guzman for alleged violation of The Belt Railway Company of Chicago’s Engineering Safety Rules: E-1.2.3 and E-1.5.3 in a personal injury on January 27, 2005 in the vicinity of the 46-48 Switch, Hump End, West Class, was arbitrary, capricious, unsupported and in violation of the Agreement (System File BRC-6887D).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. G. Guzman shall now ‘. . . have the discipline removed from his personal file, be compensated all lost wages, have his record cleared and be made whole for all losses per Rule 47.’***”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

At the time of his discipline, the Claimant was assigned as a Trackman to work with and assist Track Inspector L. De Leon with track inspection duties. He held more than nine years' seniority in the Track Sub-Department of the Maintenance of Way and Structures Department. On January 27, 2005, at some time after the lunch break, the Claimant stepped down from the truck in which he was riding, slipped, and injured his elbow in the fall. The Claimant reported the incident to his supervisor and filled out the proper forms the following day.

By letter of May 25, 2005, the Claimant was notified to appear for a Hearing:

“. . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged violation of the The Belt Railway Company of Chicago's Engineering Safety Rules . . . which resulted in an alleged personal injury to yourself January 27, 2005, in the vicinity of the 46-38 Switch, Hump End, West Class.”

An Investigation was held on June 1, 2005. By letter of June 6, 2005, the Claimant was notified that he was assessed a five working day suspension and one calendar year probation.

The discipline was appealed on June 15, 2005. The Organization noted that the Claimant had a nine-year unblemished record with the Carrier and that he had worked up to the time of the accident in inclement weather (moderate snowfall) without incident. Thus, the Organization argued, there was no basis to determine that the Claimant was in any way negligent in his conduct leading up to the injury at issue. The Organization also pointed out that there are some inherent problems with wearing “ice creepers,” and that the Claimant testified he had seen no other employees wearing them on the day of the incident.

The Carrier denied the claim by letter of June 28, 2005. It pointed out that the Claimant admitted he knew the conditions in which he was working that day were slippery. It also noted that the Claimant's testimony at the Hearing confirmed that he had at best a “two point” rather than the required “three point” contact when he descended from the passenger side of the truck. The Carrier's denial was appealed on June 30, 2005 and the matter was progressed up to and including conference on the property. In a letter to the Organization, following conference on the property, the Carrier offered, “as resolution to this matter,” to reduce the penalty to three days. The

Organization rejected the Carriers offer and the matter is now properly presented for resolution by the Board.

The Board reviewed the transcript carefully. Testimony on the record establishes that conditions of the ground and track areas on the day of the incident in question were less than ideal. By the Claimant's own admission, he was aware that the ground might well be slippery, but elected not to wear the "ice creepers" available to him. Furthermore, it appears from the record that he did not have the recommended "three point" grasp on the vehicle (two hands and one foot) before stepping down onto the slippery ground. Thus we find that he was not without responsibility in his resulting injury.

However, evidence in the record indicates that the usual discipline for such a minor infraction is normally three days' suspension – the amount offered by the Carrier following conference on the property. Accordingly the Board finds that the Claimant's discipline shall be reduced to three days' suspension and he shall be reimbursed for the remaining two days of his suspension if served.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of May 2007.