

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40304
Docket No. SG-40672
10-3-NRAB-00003-080565**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of L. P. Tyler, for payment for all time lost, including overtime with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 68, when it issued the excessive discipline of a five-day Level 3 suspension against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on July 30, 2007. Carrier’s File No. 1478613. General Chairman’s File No. UPGCW-68-1458. BRS File Case No. 14070-UP.”

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.

Claimant L. P. Tyler was assessed Level 3 discipline in the form of a five-day suspension on August 14, 2007, following an Investigation held on July 30, 2007.

The record indicates that the discipline at issue arose from the Claimant's fall from a backhoe on May 23, 2007, while working on Gang No. 5774 near Milepost 37.6 at Hearst, California, resulting in injury to one of his fingers. It is undisputed that the injury occurred when the Claimant attempted to reach a toggle switch on the unit to turn off its battery and secure it for transportation. Because the switch was on the other side of the machine from the Claimant's position, he chose to cross in front of it, walking on the "lip" or "blade" of the bucket, which was three to four inches wide. While doing so, he tripped, fell, and injured his finger.

The Carrier takes the position that the Claimant exhibited a serious lack of judgment by deciding to walk on the narrow lip of the machine, which did not provide adequate footing, rather than to take the safer course and access the battery switch by crossing in front of the backhoe either on the trailer deck or dismounting and walking on the ground.

The Organization argues that discipline for this slip and fall was unjust; that not all employees injured as a result of such incidents are disciplined; and that the Carrier failed to meet its responsibility here by providing a safer working environment. It was aware that these switches are installed in difficult to reach areas of the backhoe, it asserts, and when the backhoe was loaded on the trailer a dangerous situation was presented because there is little room to maneuver.

The Board's review of the record indicates that the Claimant's contractual rights of due process were not denied by the Carrier's handling of the Investigation. We further conclude that while it is apparent that the Claimant had little room to maneuver on the trailer, it was not the Carrier's shortcomings, but his own judgment in electing to crawl over the backhoe by way of its front bucket that

caused his injury. That failure to observe a safe working practice offended Rule 80.1 as charged.

Because there is substantial evidence in the record to support the Carrier's charges, and because the discipline imposed was not arbitrary or capricious, the Board will deny the claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 1st day of March 2010.