

PUBLIC LAW BOARD NO. 2366

AWARD NO. 45

DOCKET NO. 58

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way  
Employees

and

Illinois Central Gulf Railroad

STATEMENT OF CLAIM

"That claimant, Mr. R. C. McCleary be paid for each work day he missed because he was unjustly suspended for thirty (30) days.

OPINION OF BOARD

The Claimant was notified of an investigation concerning possible responsibility in connection with derailment of a motor car that he was operating which resulted in an injury to another employee.

Subsequent to the investigation the Claimant was suspended for thirty (30) days for "failing to safely operate the motor car."

On the day in question, the left front wheel of the motor car which was being operated by the Claimant climbed the "point" of a self-guided frog on the switch which caused the front end to derail.

Some frogs - which guide a vehicle through a switch - have level surfaces but others such as the one involved in this case, have raised guard areas.

When the Claimant's motor car entered the switch in question, the left front wheel "rose up on the frog onto the point of the frog and dropped off the frog causing the motor car to derail."

The Claimant testified that he was aware of certain hazards concerning self-guarded frogs and that they deserve "more caution than a regular frog."

Safety rules require that employees exercise caution in the performance of their duties and the Carrier insists that this Claimant could have exercised greater care in crossing the frog and thus avoid the derailment. More specifically, the Carrier states that "The only way to avoid a derailment in this situation would have been to use standard operating procedures and stop and push the motor car over the frog. These vehicles are much lighter and smaller than a standard automobile and therefor relatively easy to push because the vehicle was designed to operate only on rail." The Carrier does state however that other standard alternatives exist such as watching the front wheel as it crosses the frog or assigning the passenger to guide the motor car through the frog from outside the motor car.

The Claimant discounted use of this last system because it would have required him to assume an unsafe position or require the passenger to be in an unsafe position.

The Claimant denies that he was negligent in his operation of the motor car and further he denies that there is any established procedure to use in a situation such as the one that confronted him on the day in question; other than the general rule that employees are to conduct themselves in a safe manner. Moreover, he indicates that other employees had operated vehicles in and around the area and that he had no cause to believe that the operation of the motor car over the frog in question would result in a derailment.

The Board does not dispute the conclusions asserted by the Carrier in this case. We agree that the Carrier does have the right to establish and promulgate reasonable safety rules and operating rules. Further we agree that, in the enforcement for the Carrier's in disciplinary matters however, we are authorized to assure that there is sufficient evidence presented to warrant disciplinary action in a given case.

This Board does not find sufficient evidence in this record to conclude that the Claimant acted negligently or without regard for his own safety or the safety of his fellow passenger. If the only safe way to make a certain movement is to push a vehicle over a frog manually or to require other action which could create a safety hazard we feel that the Carrier should promulgate an operating rule in that regard advising the employees when they should take such action and what safeguards they should employ while doing so. Here, we find that there is a considerable amount of speculation as to what might have been a better course of action. We will sustain the claim.

### FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

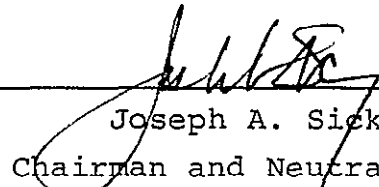
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.


This Board has jurisdiction over the dispute involved herein.

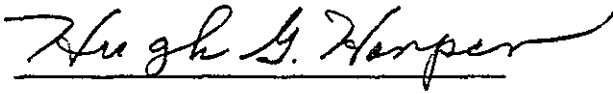
The parties to said dispute were given due and proper notice of hearing thereon.

### AWARD

1. The claim is sustained.
2. The Carrier shall comply with this award within thirty (30) days of the effective date hereof..

  
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Joseph A. Sickles  
Chairman and Neutral Member

  
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J. S. Gibbins  
Carrier Member

  
\_\_\_\_\_  
Hugh G. Harper  
Organization Member

10/12/83  
DATE