

PUBLIC LAW BOARD NO. 3765

Parties  
to the  
Dispute

BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYES

vs.

GRAND TRUNK WESTERN  
RAILROAD COMPANY

Case No.: 69

STATEMENT OF CLAIM

Claim appealing the 35 demerits assessed  
K. Shepherd, as a result of investigation  
held on April 12, 1994, in Battle Creek,  
Michigan.

OPINION OF THE BOARD

At the time of the incident that gave rise to this  
case, Claimant K. Shepherd was employed by Carrier as a  
Track Patrol Foreman headquartered in Valparaiso, Indiana.  
On October 16, 1994, while inspecting track in Claimant's  
territory, the Roadmaster and an FRA Inspector uncovered a  
joint with a cracked angle bar, a surface defect, and a gage  
1½ inches too low. Because the track was not in compliance  
with "FRA Track Safety Standards," Carrier was penalized for

having a Code I violation. As a result of the FRA inspection, Claimant was directed to attend a formal investigation of the matter on April 12, 1994. The investigation notice reads as follows:

\*\*\*to determine your responsibility, if any, for alleged failure to detect and take proper remedial action for a gage, cracked angle bar, and surface defect at M.P. 66.3, Eastbound Main, South Bend Subdivision, that were not in compliance with Paragraph 213.9 of the FRA TRACK SAFETY STANDARDS, which resulted in a Code 1 Violation on March 16, 1994.

The hearing was held on April 12 as scheduled. Claimant was granted all rights and privileges guaranteed to him by Agreement. A transcript of the hearing has been made a part of the record placed before this Board. As a result of the investigation, Claimant was found guilty as charged and his record was assessed with thirty-five demerits. The Organization appealed the decision and the case was placed before this Board for final adjudication.

This Board has reviewed the record before it. Based on that review, we are compelled to conclude that the record does not support the fact that Claimant was in any way negligent in the performance of his duties. Further, it cannot be concluded from the record that the defects discovered by the Roadmaster and the FRA Inspectors actually

existed to the degree noticed on October 16, 1994, when Claimant last inspected the track.

The Board is mindful of its duty not to substitute its judgment for the judgment of the Carrier in discipline situations. On the other hand, it does have authority to modify penalties it considers to be excessive under the conditions set out in this record.

Based on Claimant's long years of service and his exemplary work record, the Board concludes that Carrier can make its point in this case with a letter of admonishment. The record shall be modified to reflect that.

AWARD

The penalty of thirty-five demerits assessed Claimant shall be reduced to a letter of admonishment.

R.E. Dennis

R.E. Dennis,  
Neutral Member

R.J. O'Brien  
R.J. O'Brien,  
Carrier Member

D. Bartholomay  
D. Bartholomay,  
Employee Member

February 20, 1996  
Date of Adoption