

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 45

System Docket No. BMW-292D

STATEMENT OF CLAIM

The Organization contests the disciplinary action of the Carrier in assessing Track Foreman Peter Brander a one-day record suspension and the requirement to attend a safety refresher course.

FINDINGS

The Claimant, a Track Foreman, and an Assistant Track Foreman were engaged in removing debris from a switch on December 12, 1994. While so doing, the Claimant was struck by an oncoming train and seriously injured. The Claimant was subject to an investigative hearing which, because of his medical condition, was not held until March 25, 1997. The charge read as follows:

CHARGE ONE: Alleged violation of Rule B of the National Railroad Passenger Corporation Rules of Conduct which reads in part: "Safety is of first importance in the operation of the railroad and, therefore, is the most important aspect of an employee's duties. Employees

must understand and comply with safety regulations and practices pertinent to their class or craft of employment. In all circumstances, employees should take the safest course of action."

SPECIFICATION

In that while employed as a Foreman at Somerville on December 12, 1994, your failure to comply with Safety Rule #4129 resulted in your serious injury.

Rule 4129 reads in pertinent part as follows:

Before two employees who are to work together go on track, it must be arranged that they will maintain sufficient lookout, one in each direction or one in both directions, to see on which tracks trains approach: . .

Following the hearing, the Claimant was assessed a ten-day disciplinary suspension (with time considered already served during his injury absence) and the requirement to attend a safety refresher course. During the claim handling procedure, the ten-day suspension was reduced to a one-day suspension.

At issue here is solely whether the two employees had made a specific arrangement so as to be in compliance with Rule 4129. The record leaves substantial doubt as to whether such an arrangement was made prior to commencing work on the track. Upon reconsideration, the Carrier apparently considered this a relatively minor offense, given the reduction in penalty to a minimum. With the obvious conclusion that an "arrangement" more vigilantly applied may have provided the opportunity for the Claimant to escape injury, the Board concludes that the Carrier's reconsideration and

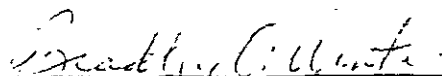
reduction of the penalty to be reasonable and without cause for being disturbed.

A W A R D

Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: JULY 3, 1998