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PLB 5383
AWD 511

At the investigation, Carrier officers testified that they had observed Claimant getting on and off a flat car in violation of Rule 144 which says that "Employees must not get on or off of moving tank cars or flat cars, except in emergency".

Claimant stated that he got on the car as the slack ran in and got off as the slack ran out, thereby getting on and off non-moving equipment.

The Board finds that there was either a technical violation of the rule or a technical non-violation and we cannot convincingly determine which. The Carrier officers were about one-quarter (1/4) mile from the scene and said that the cars in question were moving very slowly. Claimant contended he was playing the slack, apparently to avoid violation of Rule 144. In the absence of sufficient evidence, we hold that the discipline should be set aside.

AWARD

Claim is sustained.

ORDER

The Carrier is ordered to make this Award effective within thirty (30) days from the date shown below.

B. L. MacArthur
Employee Member

W. J. Dumas
Carrier Member

D. J. Kelly
Chairman and Neutral Member

Dated: Feb 20, 1998