

PUBLIC LAW BOARD - NO. 5418

Case No. 19

Award No. 19

PARTIES

to

DISPUTE:

Brotherhood of Maintenance of Way Employees

- and -

Springfield Terminal Railway Company

STATEMENT OF CLAIM:

Appeal of discipline of dismissal imposed on
Trackman, Gerald Dube on June 28, 1996.

FINDINGS: On June 4, 1996, claimant was given a notice to attend a hearing in connection with an incident that occurred on June 2, 1996, which resulted in a fellow employee being injured with two broken fingers.

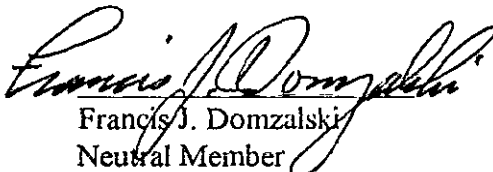
At the Company hearing, Track Supervisor, G. Yackowski testified, that upon learning that claimant was involved in an accident, he contacted him over the phone to ascertain the cause of the accident. He said the claimant told him that he and Mr. Ferraro (injured employee) were putting a hi-rail vehicle on the track and the process required that they put blocks under the truck before they could lower it onto the track. The claimant explained that they both were putting blocks under the truck, he on the left side and Mr. Ferraro on the right side, and that when he finished his side, he dropped the hi-rail without checking to see if Mr. Ferraro was clear. Mr. Yackowski said that he spoke with Mr. Ferraro at the hospital and essentially got the same version of what transpired.

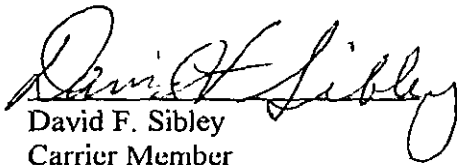
In claimant's defense, the organization raised several issues which they contend may have been contributing factors to this accident, i.e., that the truck was defective and that the involved employees never received proper training. On the surface, these defenses could be perceived as valid points. However, from the Board's perspective, after examining the entire record, we find

that the claimant was negligent in this instance. Clearly, accidents don't just happen, they are caused. In this case, the claimant readily admits he wasn't observant and that he failed to check to see if Mr. Ferraro was clear of the truck before he lowered it onto the track. .

Based on the evidence present, we support the Carrier's conclusion that claimant is guilty of the offense for which he was charged and that discipline was warranted. However, while we do not minimize the claimant's action, considering all factors involved as brought forth in the record, it is our opinion that the discipline assessed is excessive, and in our judgment, the claimant should be given another opportunity to become and remain a safe and reliable employee. Therefore, the claimant shall be returned to service, but without back pay for time lost. The claimant is to understand that the purpose of this Award is to give him another chance and the lengthy suspension without pay will emphasize the gravity of this situation.

AWARD: As specified in the Findings.


Francis J. Domzalski
Neutral Member


David F. Sibley
Carrier Member


Bradley A. Winter
Organization Member

Dated: 11-5-96