

PUBLIC LAW BOARD NO. 5418

Case No. 22 Award No. 22

PARTIES Brotherhood of Maintenance of Way Employees
to - and -
DISPUTE: Springfield Terminal Railway Company

STATEMENT OF CLAIM:

Appeal of the discipline of dismissal
assessed Mathew Przybyla, effective
December 16, 1997.

FINDINGS: This dispute arose as a result of the claimant being found guilty of violating several of Carrier's Safety Rules, in connection with the injury he sustained to his right foot while guiding a rail into a boot on a rail car on August 26, 1997.


At his December 3, 1997 hearing, the claimant, an employee with 17 days of service, testified that his assignment on the date of the incident was to guide the rail on the rail cars and that it was his first day on that assignment. Claimant said that he used the lining bar as he was instructed, to hold it against the rail and guide it into the rollers. During the process, he said his right foot which he positioned at the bottom of the lining bar had slipped, causing him to fall backwards and his foot landed on the boot which crushed his foot. At page 11 of the hearing transcript, the claimant said he carried the lining bar with him after the accident and walked 2 to 3 cars before he dropped the lining bar on the west side and proceeded to jump off the rail cars.


Company witnesses testified that it is absolutely essential that the lining bar be used in the performance of the work in


which the claimant was engaged. They stated that post-accident investigation disclosed that the lining bar was found in the adjacent car, approximately 10 to 15 feet from where the accident occurred. They said the lining bar was standing in an upright position against the east side of the car and there was a can of soda on the top of the car. Based on the discovery, they concluded that the claimant used his foot rather than the lining bar to do the assignment.

Accordingly, in our review of the entire record, the Board does not find the claimant's testimony as being credible. Considering all of the factors involved, including claimant's short tenure and the serious nature of the proven offense, the Board finds the Carrier did not misuse its discretion when it assessed discipline.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


David F. Sibley
Carrier Member


Bradley A. Winter
Organization Member

Dated: 3-25-98