

PUBLIC LAW BOARD - NO. 5418

Case No. 32

Award No. 32

PARTIES

Brotherhood of Maintenance of Way Employees

to

- and -

DISPUTE:

Springfield Terminal Railway Company

STATEMENT OF CLAIM:

Appeal of discipline of a 15 working days suspension
imposed on Manuel Furtado, on November 10, 1998.

FINDINGS: Subsequent to a hearing held on October 26, 1998, claimant was found guilty of violating several Safety Rules in connection with an incident that occurred on September 25, 1998, while he was welding on a portion of a door to a tunnel when the door came down forcing him to jump to an adjacent angle iron.

By way of background, on the date cited, claimant was assigned to make modifications to a door at the west portal of the Hoosac Tunnel, where he had been assigned for two weeks. In preparing to perform his assignment, which was approximately 40 feet above the track bed, claimant placed several planks which he used as a platform. One end of the planks was supported by a granite abutment and the other end was supported by the tunnel door, which was in an up position. The door in question, which is extremely large, moves in an up and down position, and is moved by an electric motor controlled remotely by Train Operations in Billerica, Mass. The door can also be operated manually by one of two chain falls located on each side of the door. As a safety precaution, the chain falls can be fastened to the doors to prevent the door from falling. On the date of the incident, an electrician and a B & B mechanic were also working at the site. The electrician and the claimant's helper, who was assigned to assist the electrician, were in the process of removing the electric motor when the door fell, thereby requiring the claimant to jump

and grab onto metal roof supports in order to avoid a tragic fall.

After a thorough review of the parties' submissions, we cannot sustain the Organization's position in this case. It is evident from our reading of the record, that there is substantial evidence to support Carrier's determination that claimant failed to carry out his responsibility to make sure that either he, or someone else had secured the chain falls to insure that the door was properly fastened before he began his task. The following dialogue, at pages 31 and 32, of the hearing record clearly illustrates the claimant made faulty assumptions and failed to take proper safety precautions:

"Q. Did you at any time check them chain falls?

A. No I did not. Only...only because, like I had stated before, if the door was in service or out of service...when it's out of service, the door by common practice has been put on chain falls so that it....it won't come down and give an indication in Billerica that the door's closed. I mean anytime that door has been taken out of service, it's put on the chain falls. Why those chain falls weren't on....I didn't even get down into that part so I didn't know they weren't on.

Q. So....

A. I was working on the top.

Q. So again, you assumed something should be there.

A. Oh, yeah. If the door is out of service, yes.

Q. Assuming apparently didn't work, did it?

A. No it did not."

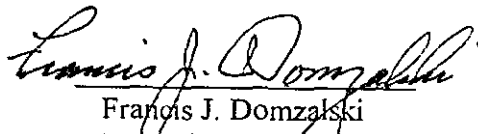
AWD NO. 32

PLB No. 5418 C-32/A-32

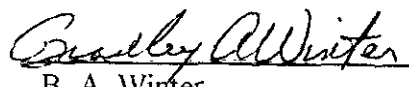
Page 3

Accordingly, given the established facts of this case, and in consideration of the serious nature of the proven offense, we find the Carrier did not misuse its discretion when it assessed discipline.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


T. W. McNulty
Carrier Member


B. A. Winter
Organization Member

Dated: 3-25-99