

PUBLIC LAW BOARD NO. 5606

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM:

1. The entry of the Letter of Reprimand plus five (5) days suspension assessed Track Foreman Grant A. Ross for the injury sustained on May 7, 1998 was without just and sufficient cause, based on unproved charges and in violation of the Agreement.
2. As a consequence of the aforesaid violation, Track Foreman Ross shall have his record cleared of the charges leveled against him and the Carrier shall compensate him for all wage loss suffered. (Claim No. MW-98-23)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

On May 7, 1998, while working as a Foreman on a tamper crew and placing a "shadow board" into a steel bracket or "the liner flag assembly" on a tamper, the stainless steel shaft slipped from the Claimant's right hand and jammed his left hand on the bracket, cutting the Claimant's index finger. The laceration or cut index finger of the left hand required three stitches to close the wound.

That subsequent to the Claimant injuring himself the Carrier has placed the bracket in a different position on the tamper does not serve to mitigate the fact that the Claimant failed to perform his duties in a safe manner at the time in question. Basically, the Carrier has now placed the bracket at a 45 degree angle as opposed to its original design state of going straight up and down the side of the tamper. This, so as to make it more accessible for employees to put the shadow box into the bracket sleeve.

The Board also finds no reason to conclude that because it would be offered that the location of the bracket in its original position caused employees to assume an awkward position when placing the shaft into the sleeve of the bracket that such a circumstance be viewed as reason to excuse the Claimant from responsibility for the injury. In this respect it is significant that it was not disputed that the same task had previously been performed "thousands of times before by hundreds of employees, including the Claimant, without

incident." The Claimant himself admitted that he had to perform this same task about four times during the work day to clear for trains, and that he has been in his present position as Foreman of the tamper crew for three years. Further, as brought out at the hearing, the shadow box had been handled on the tamper in the same manner since at least 1980, or for some 18 years before the instant injury, or what the Carrier offered, without refutation, to be "the first of its kind" involving the performance of the task of placing the shadow board into the bracket on any of its four tampers, all of which have brackets that are identical to the one here at issue.

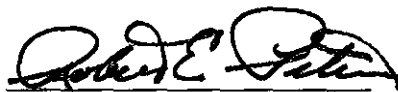
It is commendable that supervisory officials would relate that they consider the Claimant to be a safe and conscientious employee. However, the fact remains that was not the case in this instance. As the Carrier submits, the Claimant could have moved his equipment and performed the task at issue on a more level surface. He could have asked for help in performing the task. Instead, the Claimant tried to lift the 15-pound shadow board over his head to place it into the sleeve, with the board and shaft being wet with rain, and while he was standing on an uneven roadbed surface or shoulder, and thus off balance. In the circumstances, it must be recognized, as the Carrier states, that the injury was the direct result of the Claimant making several poor choices as to the manner in which he performed the task.

The Claimant's past record shows that a little over a year prior to this case that following a formal hearing he was administered a letter of reprimand for a violation of safety rules for lifting and carrying objects beyond his physical ability, namely, 80 pound bags of salt that were being placed into a truck.

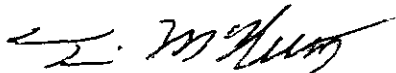
It being evident that the Claimant was guilty as charged of the instant offense, and the Board finding no merit in the procedural objections raised by the Organization in an attempt to have the discipline set aside, we have no alternative but to deny the claim.

AWARD:

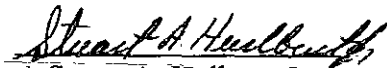
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Timothy W. McNulty
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated 10-12-99