

PUBLIC LAW BOARD NO. 5606

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

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The thirty (30) day suspension assessed Work Equipment Repairman Darrell W. Richardson for alleged negligence in the performance of his duties and responsibility for an injury (sprained left knee) while working in Oakland, Maine on Wednesday, October 29, 2003, was without just and sufficient cause, based on an unproven charge and in violation of the Agreement.**
- 2. As a consequence of the violation referred to in Part (1) above, Work Equipment Repairman Darrell W. Richardson shall be compensated for all wage loss suffered and have his record cleared of this incident. (Carrier File MW-04-08)**

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.

Claimant was assessed the 30-day suspension here on appeal in a determination by the Carrier that he was responsible for an on-the-job injury, a sprained left knee, while working as a Work Equipment Repairman at Oakland, Maine on October 29, 2003.

At the time of the injury, Claimant was trying to get the motor of a Swivel Dump truck running. He had hooked up a battery charger and, while walking around the front of the truck so that he could get into the cab of the truck to try to start the motor, tripped on something and fell forward, twisting his left knee. Claimant was subsequently taken to the Thayer Hospital in Waterville, Maine for examination and treatment of the twisted knee.

Inspection of the area where Claimant twisted his knee by Carrier supervisory officials reportedly found the ground and grass to be very wet because it was raining hard; the ground was saturated; the ballast was coal ash; the walkway was "gushy;" a small piece of a tree limb was lying on the ground in the grass area; and, a small piece of a railroad tie that was said to be about three by six inches was in the walkway area.

It is the position of the Carrier that Claimant was negligent in the performance of his job in not being more observant of possible walking hazards in his work area so as to take necessary steps to avoid injury.

After hearing varied descriptions of the area where he had twisted his knee, and being asked if he had any questions of the charging officer, Claimant said:

No questions but there to add to the statement there were quite a few leaves on the ground. You say none of the reports indicated such. I don't know. You can ask anyone of them. There was a lot of water, a lot of leaves, I mean the ground was covered. I did not intentionally walk by something that I saw as a tripping hazard and then trip over it. Obviously if I had seen something I would've, you know, made the path a lot clearer and better to walk through.

Several witness thereafter confirmed testimony of Claimant that there were a lot of leaves on the ground.

Claimant also offered into the record the following statement:

I didn't really trip or slip. I do remember stepping on something with my right foot that felt a little rocky and started to twist. That's when I went to get my balance with the other foot, my left foot. It's like you step on something your feel something there. I went with my other foot to step up cause I started to fall forward. That's when that foot caught. I have no idea what it was caught on or whether it was a branch, a tie. I don't know. But that's when it twisted when I started to go down and I somehow went around and twisted the leg.

The Safety Manager, when initially asked if the piece of railroad tie that was in the pathway was "very obvious to see," said: "Well, no." In subsequent testimony the Safety Manager said that when he looked at the piece of tie there was nothing obscuring it.

In overall study of testimony presented at the hearing, the Board finds it contains sufficient reason to conclude that Claimant was not guilty as charged of negligence in the performance of his duties. It seems to the Board that there is reason to hold

that the mentioned piece of railroad tie had been buried just beneath the surface of the walkway and that it was pushed closer to the surface of the ground by the heavy rain, and, unseen by Claimant, caused him to trip and twist his knee. In other words, it appears Claimant suffered an unforeseen accident or injury.

As stated in several prior awards of other boards of adjustment, an injury in and of itself does not substantiate the guilt of an individual employee to a charge of negligent performance of duties. See, for example, Second Division, NRAB, Award Nos. 10608, 10334 and 6306. See also Award No. 23 of PLB 5940 involving this Carrier and its employees represented by the UTU.

The Board also finds it noteworthy that at the company hearing the charging officer was asked if he had ever observed Claimant doing anything that was hurried or careless as far as his work habits were concerned, and whether Claimant had been a very safe and conscientious worker as far as he (the charging officer) was concerned. The response of the charging officer was: "Yes, he has been." In addition, several other Carrier witnesses acknowledged Claimant being a conscientious and safe worker.

In view of the above considerations and particular circumstances of record, the Board will direct that the claim be sustained.

AWARD:

Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated 6/29/05