

PUBLIC LAW BOARD NO. 5606

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
) DIVISION OF THE INT'L BROTHERHOOD OF TEAMSTERS
 TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The five (5) day suspension assessed Maintenance Foreman Larry Cookson for violation of Rule PGR-D in connection with a personal injury sustained on December 17, 2007 is based on unproven charges, unjust, unwarranted, and in violation of the Agreement.**
- 2. As a consequence of Part 1 above, Mr. Cookson shall be exonerated, the discipline assessed shall be removed from his record and he shall be made whole for any and all losses he may have sustained as a result of the discipline assessed. (Carrier File MW-08-02)**

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 the morning of December 17, 2007, Claimant, a Maintenance Foreman, was sent by the Carrier to check on a report of a broken rail underneath the second engine of a train that had derailed on the mainline of the Madison Branch between Mile Post 14 and Mile Post 15. At the time the outdoor temperature was 20 degrees, and the rail was heavily covered with snow. After assisting with the re-railing of the engine, Claimant and a trackman cleared snow away from the broken rail area with shovels in an effort to find the end of the rail that was in need of replacement. While inspecting the rail for a joint bar, Claimant used a gloved hand to brush away some snow that was stuck to the top and side of the rail. In doing so, a sliver of steel, a little larger than a sewing needle, ran through the middle finger of Claimant's gloved right hand. Claimant was taken to the hospital for removal of the sliver of steel and treatment of his punctured finger. Following this emergency medical treatment, Claimant immediately returned to full-time duty.

It is the position of the Carrier that Claimant violated Safety Rule PGR-D in a failure to perform his assigned duties in a safe and proper manner so as to avoid injury. It says Claimant could have used a shovel or a broom to have cleared the rail of snow, as opposed to his hand. Further, the Carrier says Claimant admitted from prior experience at derailments that there is the potential for slivers of steel on the track. Accordingly, the Carrier says its administration of discipline in the form of a suspension from service without pay for five days was reasonable and appropriate.

Safety Rule PGR-D reads as follows:

Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

Asked by the hearing officer at the company's disciplinary investigation to describe what happened when the injury occurred, Claimant said:

What happened I was up, I was sent up there to change, and look at a derailment where the train was and it had broke, there was, it had broke the rail that it was on because, because of a VSH [vertical split head] it had snapped the rail out so we laid the rail down so the train, to get the train over, the rest of the way over it and then I was measuring, shoveling down beside the rail to see what the length of the rail was to change it and I had come to what I thought was a joint and then I see it was a strap so I shoveled a little further and I come to another what I thought was a joint but it was just another strap and then I when I shoveled a little further I come to another joint and that's when I got down and I was, shoveled away some of the snow and it was still stuck to the part of the rail so I just wiped some of it to see what it was and that's when I got the sliver in my, through my finger.

In study of the hearing record the Board finds it noteworthy that when one of the Carrier's investigating officers was questioned as to whether there was any other way of getting the snow removed from the rail joint other than using a gloved hand, said: "Well if they would've had a broom with them well or something like that . . ." Asked if a broom or something else was available to clean the joint, this witness said he did not believe a broom was there and that the nearest one was back in a truck about two miles distant from the derailment.

The Board also notes that both this witness, and another Carrier witness, basically acknowledged that it was not an uncommon practice for track workers to brush a gloved hand across rail to clear it of snow stuck to it in a manner not unlike that which was done by the Claimant in this instance.

At the time of the incident, Claimant was an employee of the Carrier for about ten years. This injury was said to be Claimant's first injury since he joined the railroad. A Carrier witness, who said Claimant had worked for him as a foreman for five to six years, went on to state that he had found Claimant to be a safe and conscientious employee; knowledgeable of his work duties; and, having had very good work habits. In terms of past discipline, the record shows but one prior offense, a 30-day suspension administered under date of September 19, 2006 for having left a switch in the reversed position.

There is no question that Claimant sustained an on-the-job injury. However, the Board does not find the mere fact of an injury having been sustained sufficient to conclude that Claimant had not been alert and attentive when performing his assigned duties so as to avoid injury. As stated above, testimony of record shows that it was not an uncommon practice for track workers, in seeking to locate the joint of a rail, to brush snow from the top or side of a rail with a gloved hand in the same manner as did Claimant. Further, notwithstanding this apparent Carrier knowledge of such practice, nothing of record was presented to show that track workers had been told or instructed that it was unsafe to do so.

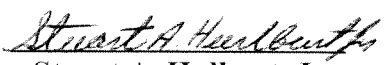
Under the circumstances, the Board will direct that discipline as administered be expunged from Claimant's record and that he be compensated for any and all time lost.

AWARD:

Claim sustained.


Robert E. Peterson
Chair & Neutral Member


Anthony F. Lomanto
Carrier Member


Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA
Dated April 12, 2010