

D-1403 2

PUBLIC LAW BOARD NO. 5696
AWARD NO. 27
CASE NO. 27

BURLINGTON NORTHERN RAILROAD

PARTIES
TO DISPUTE:

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) Mr. W. R. Johnson was unjustly suspended for fifteen days for his alleged responsibility in connection with his allegedly working unsafely resulting in him cutting his finger.

(2) As a consequence of the Carrier's violation referred to above, Claimant shall be compensated for all wages lost and discipline shall be removed from his record.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a 21 year service employee, was working as Foreman of Gang 331 on Saturday, August 12, 1995 assigned to cutting weeds and

LABOR RELATIONS

OCT 27 1997

grass along the east side embankment of the middle track behind the Retarder Tower at the Tennessee Yard. Claimant was issued a fifteen day suspension for working unsafely which resulted in him cutting his middle finger on his right hand while sharpening a tool on that date.

A review of the record of the September 14, 1995 investigation reveals that Claimant purchased a swing blade and file to perform the assigned job since the weeds on the side of the hill were too large for the weed eater normally used by the gang. Claimant was working with a driver and trackman on that date, and was attempting to complete the assignment by Monday, since his voice mail instructions indicated that the area had to be in good condition due to company expected on Monday.

Claimant testified that a new employee who had never used a swing blade before kept hitting rocks causing the blade to get cut up. Claimant stated that although he had never sharpened a swing blade before, he had watched others do it many times and felt capable of doing it himself. He noted that the signal shop containing the grinder was locked on the weekend and he wanted to get the job done timely. Claimant admitted being told that the safety of a job is more important than the job itself, and agreed that he had knowledge of various safety rules relating to avoiding injuries and working safely.

Claimant testified that the only way he ever saw anyone sharpen a blade was toward the edge, so he proceeded to sharpen it in that fashion. The flat file he was using slipped causing his finger to come in contact with the blade, which cut through his protective glove and middle finger. He did not require medical treatment or stitches, and did apply first aid cream and a band aid. Claimant stated that there is a good safety program at the

Tennessee Yard, including monthly, weekly and daily safety meetings.

Roadmaster Marvin Brown testified that he was called to investigate the injury and spoke to Claimant, who showed him how he was sharpening the blade when the file slipped and he was injured. Brown stated that he took exception to the fact that Claimant was sharpening toward the cutting edge of the blade rather than away from it, noting that Safety Rule 25.10 requires employees to sharpen objects away from their bodies and hands. Brown averred, and Claimant agreed, that the slope of the hill where the work was being performed had nothing to do with the injury in question.

Brown testified that he followed procedure by notifying an 8 member committee of a first aid log injury. He related that the committee discussed the incident with Claimant as a group by telephone, noting the fact that it was a rule violation. Brown testified that he was notified by the head of the committee that he was to issue a 15 day suspension for a safety rule violation, which he did. Claimant testified that he did not feel that he violated any rules, and that he sharpened the double-edged blade the only way he had seen it done by others. Claimant noted that the blade would not have gotten sharp if he directed the file away from the cutting edge, and stated that even if he had sharpened the blade away from the edge and the file had slipped, he probably would have injured a different part of his body.

Carrier argues that the investigation supports its conclusion that the Claimant knew of the safety rules involved, and failed to follow the safe procedure outlined in Rule 25.10 for directing the cutting edge of sharp tools away from his body and hands. It avers that this safety violation was the direct cause of Claimant's injury. Carrier contends that its assessment

of a 15 day suspension for such a safety violation is neither arbitrary nor capricious and should be upheld.

The Organization argues that Claimant did not violate any safety rules and performed the job assigned in the safest manner possible in the time allotted. It introduced with its appeal a letter from a local tool company president indicating that it is routine when sharpening swing blades with flat files to sharpen into the edge. Carrier took issue with the applicability of such opinion outside the controlled environment of a saw shop where blades are placed in vices before sharpening. The Organization contends that Claimant should not have received any discipline, and that fifteen days was excessive.

A review of the entire record convinces us that Carrier has sustained its burden of proving by substantial evidence that Claimant violated Safety Rule 25.10, among others, by admittedly sharpening the swing blade toward the cutting edge of the blade rather than away from the cutting edge. Carrier is properly concerned with work place safety and focuses much time on safety meetings and briefings in an attempt to avoid unsafe work practices. It is within Carrier's right to enforce these important safety rules and procedures by the issuance of harsh discipline. While we have little doubt that Claimant was attempting to get his assigned job performed in a timely manner, the record supports Carrier's determination that he performed the sharpening function unsafely thereby causing the resultant injury to his middle finger. Luckily, the injury turned out to be minor. However, that fact alone cannot mitigate against Carrier's right to impose discipline for a violation of its safety rules.

The record reflects that there is a specific committee procedure

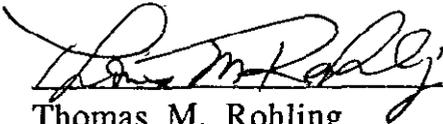
designated to handle first aid injuries, such as Claimant's, and that the discipline meted out to Claimant was the direct result of a decision of such committee. Absent a showing that similar penalties have not been given to others found by the committee to have violated safety rules, the Board is unable to conclude that the discipline imposed was arbitrary or unreasonable.

AWARD:

The claim is denied.



Margo R. Newman
Neutral Chairperson



Thomas M. Rohling
Carrier Member



E. R. Spears
Employee Member

Fort Worth, Texas
October 30, 1997