

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(Burlington Northern Santa Fe Railway (former St. Louis-  
(San Francisco Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the current Agreement when dismissing Mr. S. R. Worthy on August 7, 1997, for allegedly failing to work safely and failing to follow instructions which resulted in his being injured on August 6, 1997. (Claimant was reinstated to service in accordance with D. J. Merrell's letter dated January 21, 1998)
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to service with seniority and other rights unimpaired, paid for all time lost, and the discipline shall be removed from his personal record.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant was dismissed from Carrier's service October 7, 1997, for sustaining an injury (severe sprain to left ankle) when he attempted to move one speed swing tire off the top of a second speed swing tire.

The charges were that Claimant had been briefed at the start of the day as were others of the crew, against attempting tasks that were beyond one's physical capabilities without assistance (mechanical or otherwise), and since he incurred the injury while attempting to handle a speed swing tire, he disobeyed the instructions of his Supervisor.

The only evidence Carrier furnished in this instance of Claimant's alleged wrong-doings, was that he sprained his ankle while attempting to move a swing speed tire. No one ever stated that speed swing tires were beyond the handling ability of one person although there is a presumption there is, but presumptions are not evidence.

Furthermore, no evidence was introduced that the weight and/or bulkiness of the tire had anything at all to do with the injury, nor has it been determined as to the specifics of the slip other than Claimant's own testimony that:

"...I was gonna move some, move tire, and I was standing on top of one of them. And, moved the one that was half off the top, off the bottom one and my foot slipped...."

When Claimant was queried about the boom crane on his truck, he stated that in the location he was at he could not use the boom, but no one developed why he could not, nor did anyone really challenge his statement. It was accepted that he could not use the boom crane at the location he was at.

Furthermore, Claimant's Supervisor was aware of Claimant's assignment, yet Claimant was allowed to proceed on his own without help and without the services of the speed swing operator.

The Carrier also attempted to establish that if Claimant had but advised them that the location of the tire change precluded the use of the boom crane, they would have changed locations of the speed swing, but without a speed swing operator, the Carrier has not explained how this could have been handled.

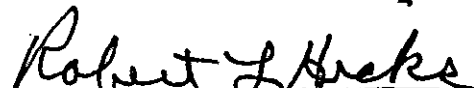
The specifics of this injury have not been defined. The Carrier has not furnished substantial evidence that Claimant was culpable of the charges assessed. Under these circumstances, Claimant is to be paid for all time lost as provided for in accordance with the practice on the property.

#### AWARD

-Claim sustained.

#### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.

  
Robert L. Hicks, Neutral Member & Chairman  
Public Law Board 6103

Dated:

