

Public Law Board No. 6204

Parties to Dispute

Brotherhood of Maintenance of Way
Employees

vs

Burlington Northern Santa Fe

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Case 2/Award 2

Statement of Claim

1. That the thirty (30) day suspension assessed Machine Operator V. L. Gilroy (Mrs. Eagle) for her alleged responsibility for an injury that occurred to another employee on October 22, 1996 near Joder, Nebraska was without just and sufficient cause, based on an unproven charge and in violation of the Agreement.

2. As a consequence of the Carrier's violation referred to in part (1) above, Machine Operator V. L. Gilroy's (Mrs. Eagle's) record shall be cleared of this incident and she shall be made whole for all lost wages and benefits.

Background

The Claimant was advised on October 11, 1996 to attend an investigation to determine facts and place responsibility, if any, in connection with an injury sustained on October 10, 1996 to Dan Palmgren while he was working on construction gang CG # 09 near Joder, Nebraska. The injury occurred near MP 437.8 at approximately 10:15 AM. An investigation was held as scheduled on October 22, 1996 and on November 30, 1996 the Claimant was advised that she had been found guilty as charged. She was assessed a thirty (30) day suspension and assigned a probation period of three (3) years with proviso that if she committed another serious rule violation during the tenure of the probation period she would be subject to dismissal. She was also advised that her suspension would commence on the day of her return to work following completion of the EAP Counselor's prescribed course of treatment for her admitted violation of

Carrier's Safety and General Rules. On or about October 18, 1996 the Claimant had advised Carrier's supervision that she had failed a drug screen test on October 10, 1996. She had tested positive for amphetamines, methaphetamines and cannabinoids. She waived her right to an investigation on this matter and voluntarily entered the Employee Assistance Services' (EAS) prescribed program.

An appeal was made by the Organization, however, of the thirty (30) day suspension and the probation assessed the Claimant result of the October 22, 1996 investigation. This appeal was processed up to and including the highest Carrier officer designated to hear such. Absent settlement of the claim on property it was subsequently docketed before this Board for final adjudication.

Discussion & Findings

A review of the transcript shows that while she was at work on October 10, 1996 the Claimant attempted to move some railroad ties from the top of a pile of ties and slide them to the ground.¹ The ties were to be used for building a switch. To do this maneuver the Claimant used a bar to pry two ties apart. She stuck the bar into a plate which was already attached to one of the ties. The Claimant attempted to dislodge this tie with the bar to get it to slide to the ground. Instead of sliding, the tie started to roll off the pile. Because of the weight of the tie the Claimant was not able to stop it from rolling. The bar she was using was sprung from the rolling tie as it rolled down the pile and effectively became a dangerous flying object. When the Claimant saw the bar flying through the air she shouted a warning to a fellow employee working with her. Luckily,

¹The Carrier's statement of claim states that the incident leading up to this case occurred on October 22, 1996. This should read: October 10, 1996.

he saw the bar catapulting toward him and raised his hand to protect himself. The bar hit and injured his hand. It could have hit him in the head.

A review of the record persuades the Board that the injury sustained by the Claimant's fellow worker was preventable if the Claimant would not have placed the bar between the tie and the plate which forethought would have told her created a dangerous scenario if the tie she was working on would have started rolling, instead of sliding, from the pile of ties. This is exactly what happened. As a result the Claimant's fellow worker injured his hand. He could have been seriously injured, of course, if the flying bar had hit him in the head. The Organization argues that there is a training issue here at stake. The Board believes that the instant injury of the Claimant's fellow worker was not related as much to training as it was to common sense. The Organization argues that others had used such bars to roll ties on the ground by sticking the bar between a tie and an attached plate. That could be. But there is no evidence that anyone every tried that maneuver to get ties off the top of a pile. On merits, the claim cannot be sustained.

The Organization states that the thirty (30) day suspension assessed the Claimant was, in fact, a four (4) day suspension since the Claimant had been allowed to return to work on December 23, 1996 on Gang CG06 due to her completion of the drug rehab program which was related to the other matter of a failed drug test which has been alluded to in the foregoing. The Carrier acknowledges that the Claimant only served four (4) days of the December 19, 1996 to January 18, 1997 suspension which she had been assessed but Carrier's officer continued to hold the position that the "...thirty (30) day suspension (would) remain on her record..."²


The Board will deny the claim for any compensation for the four (4) day suspension

²See Carrier's Exhibit 6.

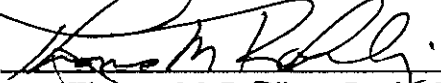
served because the Board finds the Claimant guilty as charged. The Board believes, however, that a more reasonable interpretation of Rule 40 of the operant Agreement is that the other days of the thirty (30) day suspension, not served, should not be part of the Claimant's record.³ Her record shall reflect that she served a four (4) day actual suspension in December of 1996, and no more.

Award

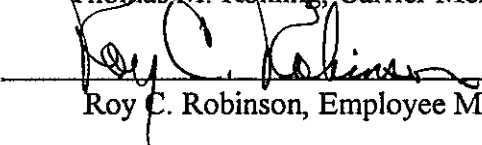
The claim is denied in accordance with the Findings.



Edward L. Suntrup, Neutral Member



Thomas M. Rohling, Carrier Member



Roy C. Robinson, Employee Member

Date: December 15, 1999

³Rule 40 states, in pertinent part, the following: "...If decision results in suspension or dismissal, it shall become effective as promptly as necessary relief can be furnished, but in no case more than five (5) calendar days after notice of such decision to the employee. If not effected within five (5) calendar days, or if employee is called back to service prior to completion of suspension period, any unserved portion of the suspension period shall be canceled".