

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6341**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES** )  
 ) Case No. 4  
and )  
 ) Award No. 1  
**DULUTH, MISSABE AND IRON RANGE RAILROAD COMPANY** )

Martin H. Malin, Chairman & Neutral Member  
D. D. Bartholomay, Employee Member  
M. S. Anderson, Carrier Member

Hearing Date: November 16, 2000

**STATEMENT OF CLAIM:**

1. The ten (10) day suspension assessed Machine Operator T. D. Miller for his alleged failure to operate Tamper TM-20 in a safe manner on Tuesday, October 12, 1999 was without just and sufficient cause and based on an unproven charge.
2. Machine Operator T. D. Miller shall now be compensated for all wages lost during the ten (10) day suspension and have his record cleared of this incident.

**FINDINGS:**

Public Law Board No. 6341, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On November 5, 1999, Carrier notified Claimant to report for an investigation concerning his alleged violation of Rules 1, 6, 7, 8, 10, 12 and 13 of the General Rules of Conduct, and Section F, Rule 2, of the Engineering Department Rules of Conduct, because he allegedly failed to operate Tamper TM-20 in a safe manner on October 12, 1999, when the tamper he was operating struck a dwarf signal. Following one postponement, the hearing was held on November 23, 1999. On December 7, 1999, Carrier advised Claimant that he had been found

guilty of violating Rules 1,6,8,10 and 12 and Section F, Rule 2, and assessed a ten day suspension.

The basic facts are not in dispute. On October 12, 1999, Claimant was operating Tamper TM-20 at Minntac, when he struck a dwarf signal at Minntac Hill, knocking it over. At the time, Claimant had not retracted the tamper's extension arms. The signal sustained very minor damage. None of the wires were cut. The accident was reported promptly to the dispatcher and a signal maintainer was dispatched to the scene. The signal maintainer stood the signal back up, serviced the signal's switch and ensured that the signal was working properly. Subsequently, two signal maintainers returned to the scene, further aligned the signal and lowered it. Claimant did not report the accident to his supervisor.

Carrier contends that it proved the charges because it proved that Claimant, by failing to retract the extension arms, was not operating the tamper safely and because it proved that Claimant failed to notify his supervisor of the incident. The Organization maintains that Claimant was operating the tamper safely because Claimant had cleared other dwarf signals with the arms extended and would have cleared the signal that he struck had that signal been properly centered. The Organization further contends that Claimant was justified in not reporting the incident to his supervisor because the damage was so minor and because the incident already had been reported to the dispatcher.

The Board has reviewed the record carefully. There is no dispute that if Claimant had been traveling with the extension arms retracted he would not have struck the dwarf signal, even though the signal was somewhat off center. Furthermore, the Supervisor-Maintenance (Track) testified, "It's a normal procedure to . . . make sure that your arms are pulled in before traveling with the machine through turnouts, signals, things like that." Based on this record, we find that Carrier proved Claimant's failure to operate the tamper safely by substantial evidence.

There also is no dispute that Claimant did not report the accident to his supervisor. Carrier's rules require employees to report all damage and all accidents to their supervisors. It was not Claimant's place to decide that the damage was so minor that it did not have to be reported. Accordingly, we find that Carrier proved Claimant's failure to report the accident by substantial evidence. We conclude that Carrier proved the charges that were the basis for the discipline by substantial evidence.<sup>1</sup>

Accordingly, we turn to the severity of the discipline. The record reveals that Claimant had been suspended for two days for an incident that occurred on August 20, 1999, when he failed to operate the tamper in a safe manner where the work heads struck a crossing while

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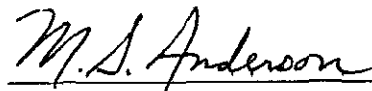
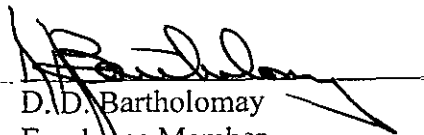
<sup>1</sup>We note that Claimant also was charged with violating Rule 7, which requires reporting accidents immediately to the dispatcher. The evidence produced at the investigation established that the accident was reported immediately to the dispatcher. In assessing discipline against Claimant, Carrier did not find Claimant to have violated Rule 7.

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traveling. Despite this suspension, Claimant again failed to operate the tamper safely just a few months later. Under these circumstances, a more severe penalty was warranted and we are unable to say that the ten day suspension was arbitrary, capricious or excessive.

### AWARD

Claim denied.

  
Martin H. Malin, Chairman  
M. S. Anderson  
Carrier Member  
D.D. Bartholomay  
Employee Member

Dated at Chicago, Illinois, January 16, 2001