

PUBLIC LAW BOARD – NO. 6461

Case No. 20

Award No. 20

PARTIES

Brotherhood of Maintenance of Way Employees

to

-and-

DISPUTE:

Grand Trunk Western Railway

STATEMENT OF CLAIM:

Appeal of the discipline of a 2 days actual suspension
and 3 days record suspension, imposed on S. Martinez.

FINDINGS: On December 22, 2004, claimant was given a notice charging him with the following offense:

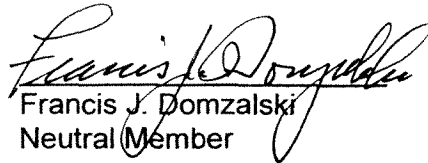
“determining whether or not you (1) properly and safely performed your work, and; (2) whether or not you violated any Company rules and/or instructions during your injury, at approximately 1800 hours on December 20, 2004, when you were working on a pull apart, on the Southward Service track at M.P. 5.5, Mt. Clemens Subdivision.”

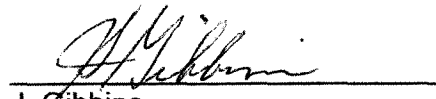
Facts disclose the claimant was assisting two co-workers in burning a pull apart with insulation. While in the process of heating the rail, the insulation flared up causing the claimant to step back, which resulted in his heel being caught in the ballast causing him to trip.

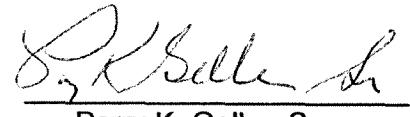
The Carrier asserts the claimant failed to properly and safely perform his work. They contend he should have taken proper precautions to avoid falling and injuring himself.

Based on the facts and circumstances presented, we find the Carrier failed to meet its burden of proof in this case. Considering all factors involved, we deem the claimant did not violate the Carrier's rules and acted properly in the performance of his duties. Hence, the claim is sustained and the Carrier is directed to remove the discipline imposed and make the claimant whole for time lost.

AWARD: As specified in the Findings.


Francis J. Domzalski
Neutral Member


J. Gibbins
Carrier Member


Perry K. Geller, Sr.
Organization Member

Dated: 9-3-05