

PUBLIC LAW BOARD NO. 6490

AWARD NO. 2

CASE NO. 2

**PARTIES TO
THE DISPUTE:**

Brotherhood of Maintenance of Way Employees

vs.

Duluth Missabe and Iron Range Railway Company

STATEMENT OF THE CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The five (5) day suspension assessed Track laborer M. E. Ojard for his alleged failure to safely perform his duties on October 26, 2001 at Mountain Iron Yard was without just and sufficient cause and based on an unproven charge.**
- 2. Track Laborer M. E. Ojard shall now be compensated for all wage loss suffered due to the five (5) day suspension (December 12 through December 16, 2001) and have his record cleared of the incident.**

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

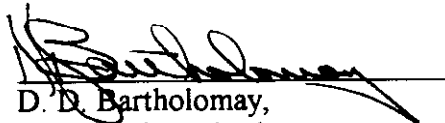
The record herein contains evidence that Claimant attempted to throw a switch that had not been cleaned of snow and ice. After encountering difficulty, Claimant brushed out the switch with his gloved hand. On his second try, he still was not able to complete the throw. While trying, he felt a "pop" in his left wrist. After the other crew members chipped ice and snow from the switch, it was able to be thrown.


Substantial evidence in the record supports the conclusion that Claimant failed to properly inspect and clean the switch before attempting to throw it, which was a contributing factor to his injury.

In light of the prior 3-day suspension in Claimant's record, we do not find the discipline assessed to be unreasonable.

AWARD: Claim denied.


Gerald E. Wallin, Chairman
and Neutral Member


D. D. Bartholomay,
Organization Member


M. S. Anderson, Jr.,
Carrier Member

Dated: February 13, 2003