

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CN/WISCONSIN CENTRAL RAILROAD**

Case No. 4

STATEMENT OF CLAIM:

Appeal of the thirty-day suspension issued to Claimant C. Quante for alleged failure to perform warm-up and/or stretching exercises after a period of inactivity before performing physical activity, in violation of Carrier rules, policies, and/or instructions, and resulting in a personal injury to Claimant.

FINDINGS:

By letter dated September 15, 2005, the Claimant was notified to appear at a formal hearing and investigation to determine whether the Claimant violated any Carrier rules, policies, and/or instructions when he allegedly injured himself while installing pandrol clips with a sledgehammer near Allanson Road Crossing, MP 38.8, Waukesha Subdivision in Mundelein, Illinois, on August 31, 2005. The investigation was conducted, as scheduled, on October 4, 2005. By letter dated October 18, 2005, the Claimant was notified that as a result of the investigation, he had been found guilty of violating Carrier Operating Rules, General Rules, and Safety Rules by not performing stretching exercises prior to starting heavy work, and that he was being issued a thirty-day disciplinary suspension. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision to suspend the Claimant. The Carrier denied the claim.

The Carrier initially contends that the record contains credible testimony and evidence proving that the Claimant violated Carrier Operating Rules, General Rules, and

Safety Rules relating to stretching exercises when he failed to perform such exercises following a period of inactivity and before performing heavy physical work. The Carrier maintains that in light of the seriousness of the incident, the Claimant's proven rule violations, and the Claimant's past discipline record, the thirty-day suspension at issue was appropriate.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the Carrier failed to provide the Claimant with a fair and impartial investigation. The Organization argues that it was inappropriate for the hearing officer to have required the Claimant to testify before any evidence had been presented against him. The Organization insists that this demonstrated that the hearing officer realized that the Carrier had no evidence to support its charges and hoped that the Claimant would incriminate himself. The Organization maintains that such a tactic is contrary to due process. The Organization argues that because the Claimant did not receive a fair and impartial investigation, the instant claim should be sustained on that basis alone.

The Organization then asserts that a review of the transcript demonstrates that the Carrier failed to meet its burden of proving that the Claimant violated any of the multiple rules cited in the charges. The Organization emphasizes that the only Carrier witness simply read into the record numerous rules that the Claimant allegedly violated.

The Organization ultimately contends that the instant claim should be sustained in

its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case and we find that the Carrier has failed to meet its burden of proof that the Claimant violated various operating rules, policies, and/or instructions on September 17, 2005, by failing to perform his stretching exercises. It is fundamental that the Carrier bears the burden of proof in cases of this kind. As this Board has stated on numerous occasions in the past, simply because an accident occurs does not necessarily mean that the Claimant violated Carrier rules prior to the incident. A thorough review of this transcript makes it clear that the Carrier has failed to prove that the Claimant violated any Carrier rules leading to his injury.

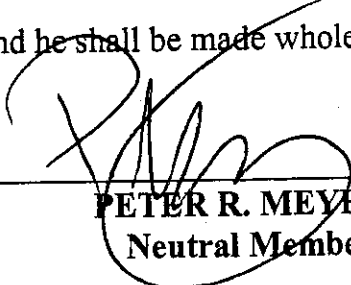
Since the Carrier has failed to meet its burden of proof, the claim must be sustained. The thirty-day suspension of the Claimant must be removed from his record and the Claimant must be made whole.

AWARD:

The claim is sustained. The thirty-day suspension of the Claimant shall be

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removed from his record and he shall be made whole.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 8-22-06



CARRIER MEMBER

DATED: 8.22.06