

BEFORE PUBLIC LAW BOARD NO. 6915

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

Case No. 8

STATEMENT OF CLAIM:

Appeal of the thirty-day deferred suspension issued to Claimant G. Hoffman for alleged violation of Carrier Operating Rules, General Rules, and Engineering Life Manual in connection with an incident that occurred on March 23, 2006

FINDINGS:

By letter dated April 5, 2006, the Claimant was notified to appear at a formal hearing and investigation to "ascertain the facts and to determine whether or not you violated company rules, instructions or policies when you allegedly failed to stand clear while 'picking' steel grillage with the boom truck" at the Carrier's material yard in North Fond du Lac, Wisconsin. After a postponement, the investigation was conducted on May 5, 2006. By letter dated May 25, 2006, the Claimant was notified that as a result of the hearing, he was found guilty of violating Carrier Operating Rules, General Rule C, and Engineering Life Manual Section II, Rule 1.b., job safety briefings. This letter further informed the Claimant that he was being assessed a thirty-day deferred suspension. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's assessment of a thirty-day deferred suspension. The Carrier denied the claim.

The Carrier initially contends that there is relevant evidence to support the conclusion that the Claimant is guilty of violating the cited rules. The Carrier maintains that the record shows that the Claimant and his co-worker did not conduct a proper job

briefing. The Carrier argues that the lack of a proper job briefing resulted in a piece of material slipping from the grapple of the boom truck, striking a piece of plate steel on which the Claimant was standing, and ejecting the Claimant into the air and resulting in an injury.

The Carrier asserts that if the Claimant had been alert and attentive, he would have noticed that there was level ground all around him, and that he did not need to stand on the plate steel for vision. The Carrier argues that the Claimant and his co-worker chose the negative, instead of the positive, situation while working at this location.

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

The Organization initially contends that the Carrier provided no evidence that the Claimant was not alert and/or attentive. The Organization maintains that there was no attempt to shortcut or abuse any rules or safe practices, nor was there any "horsing around" or neglect of duties. The Organization argues that there is ample evidence that the Claimant was acting alertly and responsibly. The Organization points out that the Claimant had chosen an elevated and visible place, well outside the swing radius of the boom as it worked. The Organization emphasizes that the record also shows that the workers maintained eye contact during the procedure.

The Organization then argues that the record shows that job briefings were conducted. As for the assertion that the loading process should be stopped for another job briefing each time a piece of equipment of differing weight, size, or dimension is loaded, the Organization insists that this was a routine operation, and there was no reason

to expect trouble.

The Organization asserts that this incident was caused by equipment failure, and it cites a report describing internal failures of valves in the grapple mechanism as conclusive evidence of defective equipment. The Organization argues that there also were "a lot of piles" of poorly stacked, loose material. The Organization contends that a number of Carrier officials may have passed these piles of junk without assessing potential danger.

The Organization then maintains that despite doctor's orders that the Claimant stay off his feet and rest after being released from urgent care in Stevens Point, the Carrier ordered the Claimant to return to Fond du Lac in the boom truck for an incomplete re-enactment before the Claimant was allowed to go home to Stevens Point. The Organization asserts that this reprehensible act may be in violation of federal law. Moreover, the Organization argues that the Carrier is attempting to transfer blame to employees rather than accept responsibility for defective equipment.

The Organization emphasizes that although an accident occurred, this does not, by itself, constitute a rule violation. The Organization insists that the Claimant did not violate any rules, so the discipline at issue should be immediately reversed and removed from the Claimant's record.

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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier rules, instructions, and policies when he failed to stand clear while picking steel grillage with a boom truck on March 23, 2006. The record is clear that the Claimant did not put himself in a safe area for the move and thereby was in a position where he contributed toward his injury from the accident. A review of the record makes it clear that this accident could have been avoided had the Claimant used the proper technique and placed himself in the proper position.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The record reveals that the Claimant was issued a thirty-day deferred suspension for his actions. Given the Claimant's length of service and previous record, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.


PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER
DATED: 5-24-07


CARRIER MEMBER
DATED: May 24, 2007