

AWARD NO. 21

Case No. 21

Organization File No.

Carrier File No. 12 (05-1238)

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
              )  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION COMPANY

STATEMENT OF CLAIM:

(1) The discipline [ten (10) days' actual suspension] imposed upon Mr. G. Crowther under date of November 4, 2005 on charges of alleged failure to perform duties in a safe and proper manner and a possible violation of Operating Rule GR-16 and CSXT Safety Policy, in connection with alleged failure to properly set a spike before striking and that became unseated and caused him a personal injury on September 8, 2005, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement.

(2) As a consequence of the violation referred to in Part (1) above, Mr. G. Crowther shall now receive the remedy prescribed by the parties in Rule 25, Section 4.

FINDINGS:


The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

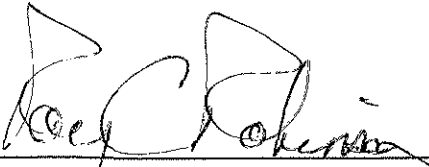
On September 8, 2005, while Claimant was setting spikes, one flew up and struck him on the arm. Claimant's arm was cut, requiring eleven stitches to close the wound. As a result of this

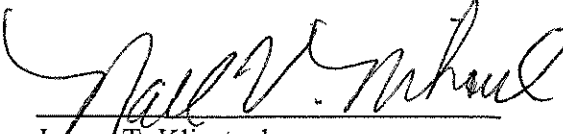
incident, Claimant was directed to attend a formal investigation at which he was charged with failing to properly set the spike. Following the investigation, Claimant was assessed a ten day suspension.

The record before the Board shows that the Carrier's requirements in setting spikes involved tapping the spike with the maul to ensure that it is firmly seated. At the investigation, Claimant testified that this incident occurred while he was tapping the spike. He explained that the ties were old and hard, which probably accounted for the spike not being set. Our review of the transcript fails to show any evidence that Claimant failed to follow the Carrier's instructions and was at fault in this incident. We conclude, therefore, that the Carrier did not have substantial evidence to support its charge against Claimant. The assessment of discipline was in violation of the Agreement. Accordingly, we will direct that the discipline be rescinded and that Claimant be made whole for time lost as a result of the suspension.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.

  
Barry E. Simon  
Chairman and Neutral Member

  
Roy C. Robinson  
Employee Member

  
James T. Klimtzak  
Carrier Member

Dated: December 30, 2008  
Arlington Heights, Illinois