

PUBLIC LAW BOARD NO. 4402

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO)
DISPUTE) BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM

1. The discipline (thirty days' suspension from service) imposed upon Foreman/Carpenter G. C. Long for alleged disregard of safety and violation of Rule 550 of the Maintenance of Way Department and Rules 1 and 567 of the Burlington Northern Safety Rules and General Rules was unwarranted and on the basis of unproven charges (System File #3 Gr./GMWA 86-11-18E).
2. The Claimant's record shall be cleared of the charges leveled against him and he shall receive compensation for all wage loss suffered.

OPINION OF BOARD

As a result of charges dated July 11, 1986, investigation eventually held on August 18, 1986 and by letter dated September 12, 1986, Claimant, a B&B foreman with 27 years of service, was suspended for 30 days for failing to use care to prevent injury to another employee on July 9, 1986.

At the relevant time, Claimant was foreman of B&B Gang 224-002 headquartered at Burlington, Iowa. On July 9, 1986 the gang was replacing 2 x 6 wood railings on the side of a bridge in Burlington. The gang members were working on the inside of the structure drilling holes and installing bolts to secure the railings to the steel structure. In the process of performing the installation work and due to a lack of clearance, one of the gang members, D. E. Broeg, briefly climbed outside of a protective railing to work and did so without the aid of a safety belt. Broeg fell from the bridge to the track below and sustained a broken leg and crushed heel.

Claimant testified that he observed Broeg on the outside of the railing but did not instruct Broeg to put on a safety belt. Claimant further testified that he instructed the crew

to work on the roadway side of the bridge and did not tell Broeg to work on the outside of the railing. Further, according to Claimant, in similar situations safety lines are not used.

With respect to the use of safety belts in this situation, Claimant testified:

- A. Well, on a bridge 25 feet, the rule says 25 feet or more, they're required. We was working at less than 25 feet and there was an area to stand on outside of the bridge railing. So I did not ... ask him to put one on at that time ... I did not. He was ... did not realize that there was going to be anything that would come from it.

Broeg similarly testified that safety lines have been provided for working on bridges over 25 feet in height but not for bridges less than 25 feet. However, with respect to his actions, Broeg acknowledged that he was not working in a safe fashion.

Rule 550 makes foremen responsible for the safety of employees and safe performance of work. Rule 1 states that safety is of the first importance. Rule 567 states that employees must exercise care to prevent injury to themselves and others. Rule 720 (A) requires that where workers:

are employed on railroad bridges 25 feet or more above the ground or water surface, and it is impractical to provide staging, ladders, scaffolds, or safety nets; safety belts and lifelines shall be provided and used.

The bridge was measured at 24 feet 8 inches above the surface. Claimant has no record of prior discipline.

Substantial evidence supports the Carrier's determination that as a foreman Claimant failed to use care to prevent injury to another employee. This is not a case where the Carrier disciplined Claimant as a foreman merely because an employee under Claimant's supervision sustained an on-duty injury. Here, Claimant saw Broeg working on the outside of the railing but took no action to instruct Broeg to use safety equipment in that working position.

The fact that Claimant had not earlier instructed Broeg or the other employees to work on the outside of the railing does not change the result. When Claimant observed

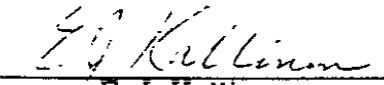
Broeg working on the outside of the railing Claimant should have taken some affirmative action to assure a safe working condition. Moreover, the fact that the bridge was a few inches shorter than 25 feet as specified in Rule 720 (A) is not determinative. While the record discloses that Claimant and others testified that no safety equipment was used because the bridge was minimally below the 25 foot high level, there is no evidence to show that at the time of the incident Claimant knew that the bridge was slightly less than 25 feet from the surface and, relying upon Rule 720 (A), purposely did not instruct Broeg to wear a safety belt solely because of his knowledge that the bridge was four inches below the cutoff in Rule 720 (A). Similarly, the testimony concerning a prior practice of not using safety equipment is also not determinative. Claimant's testimony concerning past practice is not definitive to establish that safety equipment is never required for working conditions such as the one involved in this case. Claimant testified that safety lines are "[n]ot normally" used in a "vast majority of times." Such does not establish a prior practice of not using safety equipment for this kind of working condition. Indeed, the clear implication of Claimant's testimony is that similar situations exist where safety equipment *is* required. We believe that the other safety rules read in general and common sense call for an employee to wear safety equipment if the employee is working at the height and position on the bridge that Broeg was in this case.


However, while we find that substantial evidence supports the Carrier's determination that discipline was appropriate, we believe the amount of discipline imposed was excessive. Claimant has a 27 year discipline-free record and the evidence shows that Claimant is ordinarily a safety minded foreman. In order to impress upon Claimant that safe working conditions must be maintained, we believe that a 10 calendar day suspension is in order.

AWARD

Claim sustained in part. The 30 day suspension shall be reduced to 10 calendar days and Claimant shall be compensated accordingly.


Edwin H. Benn
Neutral Member


E. J. Kallinen
Carrier Member


P. S. Swanson
Organization Member

Denver, Colorado
August 11, 1989