

**PUBLIC LAW BOARD NO. 5418**

Case No. 44

Award No. 44

**PARTIES**

to

**DISPUTE:**

Brotherhood of Maintenance of Way Employes

- and -

Springfield Terminal Railway Company

**STATEMENT OF CLAIM:**

Appeal of David L. LaFountain, Sr., regarding  
Discipline of disqualification as a Foreman until  
he has a review of RWTR plus 15 working days  
suspension imposed on October 27, 2000.

**FINDINGS:** Subsequent to a hearing held on October 13, 2000, claimant was found guilty of failing to follow the Carrier's Roadway Worker On-Track Protection Policy (RWP). It was alleged that he removed track protection and cleared the track he was working on while his vehicle was fouling the track, which resulted in the truck being hit by a road freight train in the process of yarding their cars.

Facts gleaned from the lengthy hearing transcript shows that on August 9, 2000, the claimant was a Welding Foreman assigned to repair a frog on number 10 and 11 switch in the yard at East Deerfield, Massachusetts. There is no doubt that the claimant properly applied on track protection while performing his assigned task. The question of whether the claimant actually gave up (cleared) the track after his welding work was completed is clearly in dispute and is left to interpretation. The hearing transcript is wrought with contradictions from those involved at the scene of the accident, and it would serve no useful purpose to elaborate on these differences.

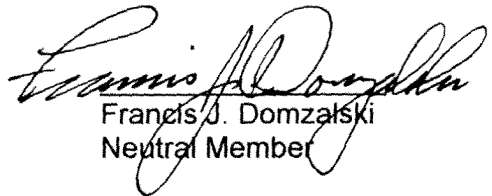
The record shows that after the claimant completed his work he removed the track protection and then called the yard office to report that he would be clear in a minute. Thereafter, the claimant and his helper went to his truck that was parked adjacent to the track, and attempted to leave but their vehicle would not start. The claimant then called his supervisor and requested a push to jump-start his truck. The supervisor advised him that he would be there in

approximately 10 minutes. During the interim, a road freight conductor had conversation with the claimant regarding whether there was sufficient clearance for their cars to pass the stalled truck. Here again, there is conflicting testimony between the conductor and the claimant as to what actually transpired. However, it is a fact that the claimant and his helper remained in the stalled truck while the freight cars began to pass.

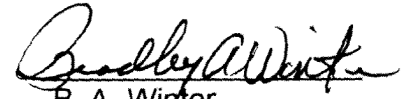
Suffice to say that after a thorough review of the hearing transcript, we conclude the claimant's poor judgment at the time contributed to the accident. Clearly, with the knowledge that his truck would not start and that it was perilously close to the track, the claimant, in our view, should have used common sense and taken several remedial steps which would have prevented the accident. First, he should have immediately contacted the yard office to inform them that his truck was stalled and was fouling the track. Second, he should have taken the initiative and told the conductor to wait until his truck was moved.

Considering all of the evidence presented in this case, it is our judgment that the Carrier was on valid grounds when it concluded that the claimant did not fulfill his responsibility as a Welding Foreman and that discipline was warranted. However, the Board concludes, that based on the entire record, and in light of claimant's 22 years of relatively good service, we deem the suspension to be excessive and it shall be reduced to a 5 day suspension.

**AWARD:** As specified in the Findings.

  
Francis J. Domzalski  
Neutral Member

  
T. W. McNulty  
Carrier Member

  
B. A. Winter  
Organization Member

Dated: 6-18-2001