

PUBLIC LAW BOARD NO. 5418

Case No. 45

Award No. 45

PARTIES

to

DISPUTE:

Brotherhood of Maintenance of Way Employees

- and -

Springfield Terminal Railway Company

STATEMENT OF CLAIM:

Appeal of the discipline of a 5-day suspension
imposed on William P. Murphy on November 7, 2000.

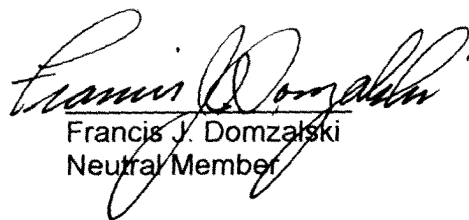
FINDINGS: Subsequent to a hearing held on October 24, 2000, claimant was found guilty of violating Safety Rule GR-J: 329, and the Carrier's Roadway Worker on Track Protection Rules, in that he was responsible for causing an accident with the Swing Loader he was operating and a parked vehicle.

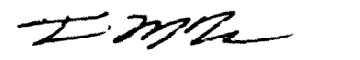
The Carrier states the claimant's actions caused the accident as he was the sole operator of the machine and, based on the sequence of events, it was evident that he did not exercise proper caution and he should be held accountable.

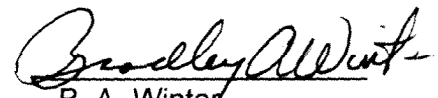
Clearly, in our judgment, the hearing transcript is lacking in several areas; it lacked specificity regarding the damage to the vehicle struck and, none of the employees at the scene of the accident were called as witnesses. Nevertheless, the claimant was forthright at the hearing and admitted that he struck another vehicle while operating the Caterpillar Swing Loader. However, both he and the Organization assert that there were mitigating factors that should be considered. They testified that he was operating an unfamiliar machine and was only given 20 minutes of instructions and was told to perform a task in an extremely tight operating area.

Based on the established facts of this case, we conclude the claimant exercised poor judgment by failing to communicate with his co-workers to direct him with his move. Therefore, considering all factors involved, including claimant's prior discipline record, we deem the Carrier did not misuse its discretion when it assessed discipline.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


T. W. McNulty
Carrier Member


B. A. Winter
Organization Member

Dated: 6-18-2001