

PUBLIC LAW BOARD NO. 5418

Case No. 51 **Award No. 51**

STATEMENT OF CLAIM:

Appeal of the discipline of a 3-day suspension imposed on Trackman, Donald Butynski, on March 5, 2003.

FINDINGS: On January 6, 2003, claimant was given a notice charging him with the following offense:

“Your actions on Monday, December 30, 2002, when walking west through a dug out panel area in Ayer yard you stepped on a piece of metal which caused a puncture wound to your right foot. Also to be investigated are any possible violations of the Springfield Terminal Safety Rules, specifically but not limited to Rules GR-D, GR-J and 56(a).”

At claimant's February 11, 2003 hearing, Carrier witness, Track Supervisor, J. Steiniger, testified that claimant's injury was a direct result of his failure to comply with Carrier's General safety Rules 1 and 2. He asserts the claimant failed to wear proper protective footwear and failed to avoid traversing through a freshly excavated area prepared for a track panel.

General Safety Rules 1 and 2 were discussed at the hearing and the pertinent portions of the Rules are quoted as follows:

Rule 1 – “Employees must be suitably dressed, and wear proper shoes or Boots to perform their duties safely.”

Rule 2 – “Employees are prohibited from wearing the following type shoe.....any type shoe that provides negligible resistance to impact or puncture.”

The Carrier asserts the boots worn by the claimant, which were introduced at the hearing, showed that the rubber soles had approximately 1/8 of an inch thickness that did not

provide any resistance to impact or puncture. The Carrier also contends the claimant should have sought an alternate route to secure his tools, rather than to step down into a freshly excavated track panel area that could pose a possible risk of debris.

In summary, the Carrier contends the claimant with 24 years of service did not provide adequate protection for himself to avoid injury. He should have ensured that he wore proper protective footwear before he performed any work and, he should have avoided traversing through a freshly excavated area with potential hazards.

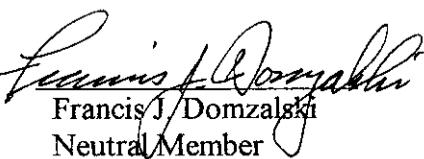
The Organization asserts that claimant's injury was through no fault of his own and he did not violate any Carrier rules. They contend that there was no visible indication of any debris in the excavated area that had been previously cleaned of debris. In addition, they assert the Carrier has no standards for footwear and in any event, the boots that he wore gave him the support and protection that was needed for his position. They contend there is no justification for the discipline assessed in this case.

After a thorough review of the hearing record and the parties' submissions, we cannot sustain the Organization's position in this case. Clearly, there are potential hazards associated with track work, and a veteran employee like the claimant should know that he must be properly dressed to safely perform his work and avoid hazardous conditions. The undisputed thinness of the rubber soles on claimant's boots was certainly a contributing factor to his injury and, it was a factor that he should have been keenly aware of. At Page 45 of the hearing transcript the claimant readily acknowledged that his boots were worn down.

Therefore, given the established facts of this case, we find the Carrier properly concluded that the claimant was guilty of the offense for which he was charged and that discipline was

warranted. Thus, in consideration of the proven offense, we will not disturb the Carrier disposition in this case.

AWARD: The claim is denied.



Francis J. Domzalski
Neutral Member



T. W. McNulty
Carrier Member



B. A. Winter
Organization Member

Dated: 3-22-04