

PUBLIC LAW BOARD NO. 5418

Case No. 53

Award No. 53

PARTIES

to

DISPUTE:

Brotherhood of Maintenance of Way Employees

-and-

Springfield Terminal Railway Company

STATEMENT OF CLAIM:

Appeal of the discipline of dismissal
imposed on Trackman, Donald Butynski,
effective February 4, 2004.

FINDINGS: This dispute arose as a result of the claimant being charged with the following offense:

“Negligence in the performance of your duties, specifically your responsibility in connection with your injury that occurred on Thursday, December 11, 2003 in Otter River, MA. While working on track panels, you lost your footing and fell, injuring your left wrist. Also to be investigated at this investigation hearing are any possible violations of the Springfield Terminal Railway Company Safety Rules, specifically, but not limited to Rules GR-D, 41 and 56(a).”

Facts involved in this case disclose the claimant broke his wrist as a result of a fall while he was working on track panels in Otter River, MA. The ground at the site was examined and found to be level and had the presence of ice. The exact manner and circumstances as to how the claimant fell is not discernable from the record and there were no eyewitnesses to the accident.

It is the Carrier's position that the claimant negligently injured himself while performing his duties. They assert that he was working in an area that was covered with ice and he consciously chose not to wear protective ice-creepers on his boots. They point out that claimant testified that he owned a pair of ice-creepers and had them with him on the day he slipped and fell. They contend that he violated the above cited safety rules by not wearing proper protective equipment, and by not being alert and attentive in the performance of his duties. They also point out that the

claimant is a veteran employee with 25 years of service and, because of his experience, he should have exercised due care by taking proper safety measures before he engaged in his work.

Therefore, based on the circumstances involved in this case, and noting his service record includes prior discipline for injuries he received due to negligence, they contend that he is accident-prone and the discipline assessed was warranted.

Conversely, it is the Organization's position that the claimant is not guilty of violating the rules for which he was charged. They assert that his injury occurred because he was required to work in less than ideal conditions and without proper safety equipment. In his defense, the claimant testified that albeit he had ice-creepers in his possession on the date of the accident, he contends they were of no use because they were stretched out and wouldn't fit on his over boots. He also alleged that he previously requested another pair of ice-creepers but was told that none were available.

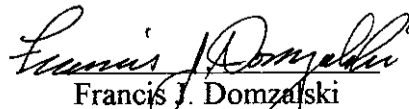
After a thorough review of the record, we found the claimant's testimony to be contradictory, self-serving and specious. His attempt to exculpate himself of the charges by alleging his ice-creepers were stretched and wouldn't fit over his rubber boots is not credible. The Board notes that the claimant failed to introduce the ice-creepers at his hearing to support his contentions. Moreover, we found his other excuses were not convincing.

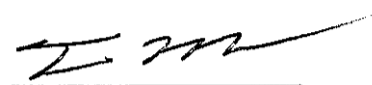
Given the established facts and circumstances presented in this case, we agree with the Carrier's conclusion that the claimant failed in his responsibility to assure that he wore the proper safety equipment before engaging his work in that environment. However, without minimizing the seriousness of the violation, because it may warrant dismissal, the Board does take all factors into account, including his 25 years of relatively good service, and determines

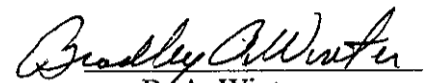
that the discipline assessed is excessive.

Therefore, the discipline shall be reduced to a 30-day suspension. The claimant is to understand that the purpose of this Award is to give him another chance to be a safe and reliable employee. When the claimant is physically able to return to service, he will be required to attend relevant safety training.

AWARD: As specified in the Findings.


Francis J. Domzalski
Neutral Member


T. W. McNulty
Carrier Member


B. A. Winter
Organization Member

Dated: 3-22-04