

**PUBLIC LAW BOARD NO. 5418**

**Case No. 55**

**Award No. 55**

**PARTIES**

**to**

**DISPUTE:**

Brotherhood of Maintenance of Way Employees

-and-

Springfield Terminal Railway Company

**STATEMENT OF CLAIM:**

Appeal of the discipline of a 10-day suspension  
imposed on Brian Larson.

**FINDINGS:** On November 21, 2003, the claimant was given a notice charging him with the following offense:

**"Negligence in the Performance of Duties**

Specifically, on November 14, 2003, the transmission on the PC-90 Piggy Packer machine failed which was determined on Nov. 17, 2003 to have been caused by a lack of oil. Also on November 21, 2003 the Hyster Reach Stacker needed 50 gallons of hydraulic oil and also needed to be greased. It was your responsibility to properly service and maintain both these pieces of equipment located in Ayer, MA. on a daily basis."

The Carrier asserts the claimant failed in his responsibility as a Mechanic to properly service and maintain the equipment in question, and that his negligence contributed to the equipment failure.

During the claimant's hearing, Carrier witness, R. C. Musgrave testified that subsequent inspection of the involved equipment showed that the fluid levels were not properly checked. He pointed out that prior to the incident, there were no reports of any fluid spills or broken hoses on the equipment, and the fact that they had to add approximately 80 gallons of oil to the machine, supports the fact that "nobody was checking the machines for quite a while".

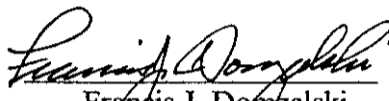
In his defense, the claimant points out that on November 21<sup>st</sup>, he was off on a personal day. He maintains that on the other days set forth in the charge, he had checked fluid levels on the

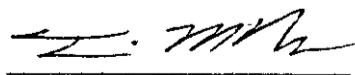
equipment and they were full. To support his contention, he introduced into the record a statement from a co-worker that said he had watched the claimant check the fluids on November 15<sup>th</sup>.

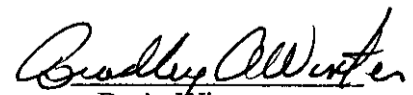
After a thorough review of the parties' submissions, we cannot sustain the Organization's position in this case. It is evident from our reading of the record, that there is substantial evidence to support the Carrier's determination that claimant failed to carry out his responsibility to assure the equipment was properly maintained. Clearly, the addition of approximately 80 gallons of fluid to a machine is a substantial amount, and is a condition that a Mechanic certainly should have noticed.

Therefore, based on the record, we agree with the Carrier that the claimant was guilty of the offense for which he was charged and that discipline was warranted. However, the Board concludes, that in light of the claimant's discipline free service, we deem the discipline assessed for this first offense to be excessive and it shall be reduced to a Reprimand. Thus, claimant is to be paid for any lost time due to the suspension.

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

  
Francis J. Domzalski  
Neutral Member

  
T. W. McNulty  
Carrier Member

  
B. A. Winter  
Organization Member

**Dated:** 7-26-04