

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

**NORTHEAST ILLINOIS REGIONAL COMMUTER
RAILROAD CORPORATION**

)
) Case No. 16
)
) Award No. 11
)
)

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
J. P. Finn, Carrier Member

Hearing Date: December 13, 2002

STATEMENT OF CLAIM:

Claim on behalf of Metra employee Benjamin Contreras for the removal of censure and three (3) day deferred suspension as a result of Carrier's arbitrary, capricious, disparate and excessive discipline in assessing Claimant a three (3) day deferred suspension under the date of September 11, 2000.

FINDINGS:

Public Law Board No. 5564, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On July 5, 2000, an equipment mechanic was standing on a rail, repairing a tie adzer and the rail was moved with a speedswing, pinning the mechanics's foot. The mechanic suffered an injury to his foot and ankle.

On July 14, 2000, Carrier notified Claimant, the equipment mechanic and seven other employees to appear for a formal investigation on July 21, 2000, in connection with their alleged involvement in the equipment mechanic's injury. The notice charged Claimant and the other employees with violating Employee Conduct Rules II, Paragraph #1, L and N, Paragraph 3, Items 1 and 2; and and L Safety Rules and General Procedures 1.1, 1.1.2, 2.6, 2.8, 100.4, 1005.108.1.4, 142.2.2, 142.3, 142.2.4, 142.3.1 and 142.3.2. The hearing was postponed to and held on August 23, 2000. On September 11, 2000, Carrier notified Claimant that he had been found guilty of the rule violations charged by failing to make sure everyone was in the clear before authorizing the pulling of the rail and assessed a three day deferred suspension.

The Board has considered the record carefully. We find that substantial evidence supports the finding on the property that Claimant failed to make sure that all employees were clear before he authorized the pulling of the rail.

The record reflects that Claimant was working as an assistant foreman on the day in question and that he authorized the pulling of the rail. At the time he gave the authorization, the equipment mechanic was still standing on the rail. The injured equipment mechanic testified that he received no warning before the rail was moved. Another equipment mechanic who was present testified that he received word over his radio that the rail was being moved while the rail was already moving. The supervisor pushed this other equipment mechanic out of harm's way. The supervisor testified that he observed Claimant walking toward the adzer warning about the rail after the rail had started moving.

The Organization contends that the supervisor was responsible for the injury because he gave the equipment mechanic instructions that placed the mechanic in harm's way and failed to conduct a job briefing. The record, however, does not support the Organization's position. On the contrary, the record reflects that the equipment mechanic was already repairing the tie adzer when the supervisor walked by. The supervisor merely suggested that the tie adzer's RPM was too low and that the mechanic adjust the machine's speed. We find nothing improper in the supervisor's actions.

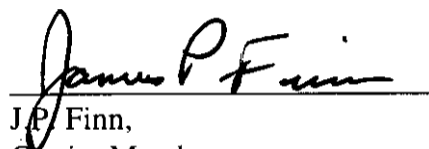
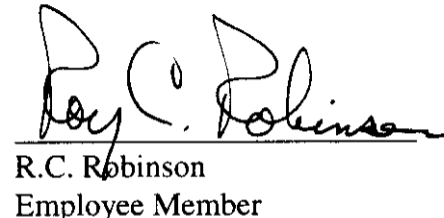
Accordingly, we conclude that Carrier proved Claimant's responsibility for the accident by substantial evidence. We further find that the penalty of a three day deferred suspension for violations of safety rules was in accord with Carrier's progressive discipline policy and was not arbitrary, capricious or excessive. Therefore, the claim must be denied.

AWARD

Claim denied.



Martin H. Malin, Chairman


J.P. Finn,
Carrier Member
R.C. Robinson
Employee Member

Dated at Chicago, Illinois, April 14, 2003