

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
) Case No. 7
and)
) Award No. 5
NORTHEAST ILLINOIS REGIONAL COMMUTER)
RAILROAD CORPORATION)

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
J. S. Morse, Carrier Member

Hearing Date: November 17, 1997

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The discipline (entry of censure) imposed upon Bridge and Building (B&B) Mechanic R. L. Lynch for alleged '... failure to properly perform your duties as B&B Mechanic, on Tuesday December 26, 1995, when during adverse weather conditions you allegedly jumped from the side of the Calumet Station platform to track level, resulting in your slipping on a railroad tie and injuring your leg, has revealed your responsibility for violation of Metra Safety Rules B-39, B-41, E-179 and Metra Employee Conduct Rule "N (1)", (Carrier's File 08-13-238).
2. As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the entry of censure and of the charges leveled against him.

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 December 27, 1995, Carrier notified Claimant to report for an investigation on January 4, 1996. The notice charged

Claimant with jumping from the side of the platform at Calumet Station to track level, resulting in his slipping on a railroad tie, injuring his leg, in violation of Safety Rules B20, B39, B40, B41, B45, E179, General Rule II, and Employee Conduct Rules N (1) and L(1). Following two postponements, the hearing was held on February 23, 1996. On March 4, 1996, Carrier advised Claimant that he had been found guilty of violating Rules B-39, B-41, E-179, and N (1), and assessed a letter of reprimand.

On December 26, 1995, Claimant was part of a crew of four assigned to remove snow from the platform at Calumet Station. After completing the assigned task, Claimant climbed down from the platform to the tracks. As he was walking over to get the salt spreader, Claimant slipped on a railroad tie and injured his leg.

The parties disagree over whether Carrier proved the violations by substantial evidence. Much of the inquiry during the investigation focused on the allegation that Claimant jumped from the platform to track level. However, it appears that the charges relating to his alleged jumping off the platform were not substantiated and Carrier ultimately did not find Claimant in violation of rules relating to the alleged jump.

Carrier maintains that Claimant should have left the platform through the gates instead of via the track. In Carrier's view, the accident would not have happened if Claimant had exited through the turnstile gates. Claimant, however, testified that the gates would not open and that his only options were to climb over the turnstiles or descend to track level. Claimant opined that descending to track level was the safer of the two alternatives and there was no evidence to the contrary.

Carrier's finding of guilt was premised on the view that the PAL Center which operates the gates should have been called to unlock the gates and that documentation from the PAL Center revealed no such call. However, there was absolutely no evidence that Claimant was responsible for calling the PAL Center and getting the gates unlocked. Claimant testified that the first employee to arrive would call the PAL Center, but that he was not sure who that was.

Following Claimant's testimony as to the condition of the gates, the hearing officer recessed to ascertain whether the other three gang members were available. Following the recess, the hearing officer reported that two of Claimant's coworkers had no recollection of the incident and the foreman was unavailable. Although the Organization had offered a postponement to secure additional testimony, such as that of the foreman, the hearing officer chose not to postpone the hearing but, instead, to conclude the hearing with a PAL operator through whom he admitted documentation of telephone activity at PAL on the date in

question.

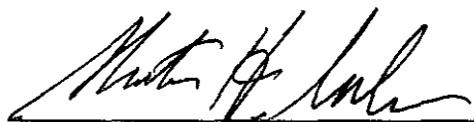
The record thus contains no evidence concerning who had responsibility for contacting PAL and having the gates unlocked. The evidence in the record only proves that Claimant was faced with the need to choose between climbing over the turnstile carrying a salt spreader or climbing down to track level and then retrieving the salt spreader. There is no evidence that Claimant's choice was less safe than climbing over the turnstiles. Accordingly, on this record, we cannot say that Carrier proved the violations by substantial evidence.

AWARD

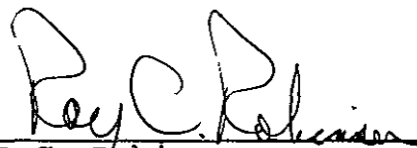
Claim sustained.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.


Martin H. Malin, Chairman


J.S. Morse,
Carrier Member


R.C. Robinson
Employee Member

Dated at Chicago, Illinois, December 12, 1997.