

PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) DIVISION OF THE INT'L BROTHERHOOD OF TEAMSTERS
 TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assessed Trackman Stephen M. Pelkey five (5) days discipline for allegedly being negligent in the performance of duties when he sustained injury to his left foot on October 26, 2004.
2. As a consequence of the violation referred to in Part (1) above, Trackman Stephen M. Pelkey shall now have his record cleared of this incident and be compensated for all wage loss suffered. (Carrier File MW-05-09)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

While working as a Trackman in a Maintenance Crew on October 26, 2004, Claimant sustained injury to his left foot while dismounting a Tie Handler machine. Claimant's left foot was said to have rolled outward, causing him to suffer a small fracture to the left side of the foot. At the time, Claimant was helping to prepare the Tie Handler to be switched off a siding for use on a bridge project in the vicinity of Norridgewock, Maine. There were no witnesses to the injury.

Although the Carrier determined Claimant to be guilty, as charged, of negligence in the performance of his duties, it is evident in study of the record that the Carrier conclusion is based on nothing more than speculation. In this respect, it was alleged that Claimant had stepped onto a side brace or rail catcher that is under the step, a brace that extends downward at a rather sharp angle, and that his foot slipped off it as he was dismounting the Tie Handler.

In this respect, a Carrier supervisory official who investigated the injury was asked at the company hearing if he felt Claimant was in violation of Safety Rule 68b in the

manner he dismounted the Tie Handler. His response, with emphasis added by the Board, was as follows:

Yes I do. While dismounting the machine there is one step about 27-1/4 inches off the ground and then there's a platform underneath the cherry picker that's about 21-1/2 inches and *I believe he tried to utilize that as a step* and it's slanted at about a fifty degree angle and *I feel he slipped, his foot slipped off of that* and he fell to the ground.

Another Carrier witness who was the Manager Safety on the date of the injury was questioned as to whether he was able to draw any conclusion as to what he felt from his investigation had contributed to the injury. The Manager Safety responded to the question as follows: "Not really just basically speculation."

Claimant, an eight year employee, was said at the investigation to have numerous times gotten on and off the Tie Handler without injury and to have always performed his work in a safe and conscientious manner. Further, the record shows that Claimant had no prior reportable injuries.

In the circumstances, the Board finds that the Carrier has not met a necessary burden of proof to establish that Claimant was guilty, as charged, of negligence in the performance of his duties. As this Board stated in prior Award No. 39, the fact an employee suffers an injury does not in and of itself substantiate that it was due to a failure to be fully observant of safety rules or to have performed a work task in a negligent or careless manner.

AWARD:

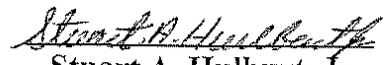
Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated 2/5/08