

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 William P. Perro a sixty (60) day calendar suspension for alleged responsibility account sustaining personal injury while on duty May 25, 2007.
2. As a consequence of the violation referred to in Part (1) above, Claimant Perro shall have the discipline assessed against him removed from his record and be made whole for any and all losses he may have sustained as a result of the discipline assessed against him, including being credited for any lost credits towards his Railroad Retirement that he may have accrued due to the discipline assessed him.

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.

The disciplinary suspension here on appeal arises from the fact that while working as a Trackman at a Canaan, Maine derailment site, pulling rail spikes for the dismantling of damaged track sections around midnight on May 25, 2007, Claimant suffered a left hand ring finger contusion that required two stitches and a splint.

Accident reports filed separately by both Claimant and his supervisor under date of May 26, 2007 describe the injury to have occurred as follows:

Pulling spikes, one rail to another, gauge was narrow, pulled inside spike, bent under plate, hand came down between claw bar and opposite rail, crushing ring finger on left hand.

It is the position of the Carrier that Claimant could have avoided the injury had he repositioned his hands on the claw bar during the process of removing a spike so as not to pinch his hand on the opposite rail. It says Claimant should have been aware where the opposite rail was when pulling spikes. The Carrier further says Claimant had a duty, under the rules, to plan his work to avoid injury; exercise care to prevent injury to himself; be alert at all times; and, have used common sense in the performance of his duties.

Notwithstanding the Carrier contentions involving such actions as should have been taken pursuant to rules, neither the notice of hearing nor the disciplinary decision as issued cite any Safety or other rule as having been violated. The hearing notice said the investigation was to develop Claimant's "responsibility, if any, in connection with an incident that occurred on May 25, 2007" when he allegedly broke and cut his finger while pulling spikes at a derailment at MP 107. The notice of discipline states in part here pertinent:

Please be advised that I have reviewed the transcript of the aforementioned hearing provided you. I find the testimony supports the Carrier's charge against you. As a result of this finding I am assessing you discipline in the form of a suspension from service without pay for sixty (60) calendar days.

The Carrier Charging Officer did, however, introduce two Safety Rules into the hearing record. It was asserted that had Claimant been in full compliance with those rules the injury "may not" have happened. These rules read as follows:

GR-D Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

GR-J Employees must be observant and use common sense at all times.

Employees must expect the movement of trains, engines, cars or other movable equipment at any time, on any track, in either direction.

Employees must not stand on the track in front of an approaching engine car or other moving equipment.

Employees must inform themselves as to the location of structures or obstructions where clearances are close.

Study of the record reveals that no one witnessed the accident, and all the Carrier can point to as concerns a personal responsibility of Claimant is a part of his

statement wherein he acknowledged that he may have misjudged the location of the rail in relation to where his hand was on the claw bar. As concerns any misjudgment on the part of Claimant, it is worthy of note that the charging officer, a track supervisor, said the rail on which Claimant had sustained injury was "ripped off the ties and there was maybe seven or eight inches higher than the ties because, you know, it's destroyed track." It is also noteworthy that this is the first on-the-job injury for Claimant over his thirteen (13) years of service with the Carrier. Further, Claimant did not miss any work time as a result of the injury.

In many respects it appears the Carrier has made the assumption that Claimant need be extensively disciplined because the injury sustained was the result of his being overly careless or negligent in a failure to exercise proper care to avoid injury in the performance of his assigned duties. The Board does not concur with that assumption. Certainly, employees may be held accountable for a failure to work in a safe manner, and it may be that Claimant should have been more observant to the opposite rail being higher than normal account the derailment. However, the extent of the injury is not found to be sufficient to mandate imposition of an overly harsh and excessive disciplinary penalty.

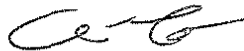
In the light of the above considerations, the Board finds that the Carrier has failed to sustain a necessary burden of proof to support the extent of discipline imposed, a sixty (60) day calendar suspension. We find a more appropriate penalty to be a ten (10) day calendar suspension when a lesser degree of responsibility for the injury is given consideration and viewed in the light of Claimant's past discipline record. The Board will, therefore, direct that discipline be modified to the extent stated and Claimant be compensated for time lost beyond such ten (10) day period of time.

AWARD:

Claim sustained to the extent set forth in the above Findings.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated Sept. 16, 2008