

PUBLIC LAW BOARD NO. 569
AWARD NO. 21
CASE NO. 21

BURLINGTON NORTHERN RAILROAD

PARTIES
TO DISPUTE:

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) Mr. Berlin St. John was unjustly suspended for thirty days beginning May 20, 1995, and ending June 19, 1995, for his alleged responsibility in regard to his failure to work safely resulting in a personal injury at approximately 2:45 p.m. on May 19, 1995, at Lindenwood (St. Louis) yard.
- (2) As a consequence of the Carrier's violation referred to above, Claimant should be paid for all time lost and the discipline shall be removed from his record.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a trackman with 3 years of service, was suspended for

thirty days for failing to work safely on May 19, 1995 resulting in his personal injury. He was charged with violating the following Safety Rules:

Rule 1.1.2

Alert and Attentive

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

Rule 31.17

Keeping Clear of Boom and Load

.....At all times, employees must stand where they can see and be seen by the machine operator.

Rule 31.17.3

Holding a Sheave or Cable

Do not take hold of a sheave or cable while hoisting equipment is being operated.

The June 5, 1995 investigation reveals that at the time of the injury in question, Claimant worked on the weekend maintenance gang under Foreman John Riordan. On May 19, 1995 the four members of his crew were assigned to load panels that were hanging on the side of a ditch onto a flatcar. Claimant stated that the job was unsafe since the ties were falling off the panels as they were lifting them, and requested that he be permitted to work on top of the flatcar rather than be one of the two men on the ground securing the panels to the chains for lifting by the crane operator.

Claimant testified that his responsibility was to unhook the panels

from the chains after the crane operator had swung them over the top of the flatcar, and that he had loaded 5 panels in the same fashion that afternoon. He noted that they were partial panels, due to the ties falling off as they were being moved, and that they had not been secured by respiking as they normally were. Foreman Riordan testified that they did not spike the panels because it was not safe to do so with the way they were situated. Claimant explained that he routinely made sure to get in the clear and give the crane operator a hand signal before the next panel was loaded. Riordan, Claimant and crane operator Lonnie Hall admitted that there was good communication among this crew and that they all knew what was going on with this assignment; they had moved panels onto flatcars previously.

While loading the last panel onto the flatcar, Claimant climbed on top of it to get to the appropriate location to unhook it. Riordan recalled that he had gone up on the flatcar to help pull Claimant out of a hole in the floor caused by rotting ties, was told that Claimant did not need help unhooking the chain, and began walking to the other end of the flatcar away from the crane while Claimant went in the opposite direction. Claimant testified that he unwrapped the chains from around the rail but did not disconnect the four-way sling from the chains since they were in the process of clearing up. Before Claimant got off from the panel and gave the "all clear" signal to the operator, he saw the sheave with the four-way sling still attached coming toward him, and he put up his right hand to protect himself from being struck and knocked over. Claimant's right thumb became entangled in the cables going into the sheave, causing an injury to the tip of his right thumb. He was taken by ambulance to the hospital, accompanied by Roadmaster John Solano, where he received medical attention.

Riordan testified that he heard Claimant scream and turned to see his thumb caught in the block cable. Riordan yelled to the operator to stop and helped Claimant get his thumb out. Operator Hall testified that he did not activate his hoist and swing line until he felt that Claimant and Riordan were in the clear. Riordan recalled seeing Claimant's arm going up before he began moving his equipment, and testified that the gesture may have been a signal or Claimant may have been slipping. Hall, Riordan and Claimant each testified that they could not think of what they could have done differently to have prevented the injury. Claimant stressed that he did not grab hold of the cable, but put his hand up to prevent it from hitting him, and therefore felt that he complied with all rules. The injury and accident reports confirm that Claimant stated that his hand got caught in the cable when he was attempting to prevent the block from hitting him by pushing it away.

The Carrier argues that Claimant violated very important safety rules, and that the Organization failed to meet its burden of proving that Claimant was entitled to monetary compensation, since he served the thirty day suspension while he was off work with limitations caused by his injury.

The Organization argues that Claimant did not violate any rules, since Claimant only put his hand up to protect himself from being knocked over, and did not hold the sheave. It argues that since the crew was working together safely with overall good communication, and nothing could have been done differently by Claimant to prevent the injury, no discipline is warranted. The Organization further contends that the penalty imposed was excessive, considering the Claimant's clean prior disciplinary record and the fact that the conditions the crew was working under contributed to

the chance of injury.

After full consideration of all of the facts, this Board is of the opinion that there is substantial evidence in the record to support Carrier's conclusion that Claimant may not have performed his work in a totally safe manner at the time of his injury on May 19, 1995. However, the facts clearly reveal that it was a miscommunication between the crane operator and Claimant that caused Hall to begin moving his equipment prior to the time Claimant was clear of the area. The record does not establish that Claimant's arm movement that Hall took to mean that he was clear of the equipment was an improper signal, or anything other than Claimant's attempt to balance himself on rotten ties and panels which he had already fallen through. While the result was unfortunate, we cannot conclude that Claimant "took hold" of the cable in violation of Rule 31.17.3, or was not alert and attentive to his work assignment at the time of his injury. However, the Board does find that Carrier established that Claimant did not stand clear of the boom where he could be seen by the crane operator on this occasion, in violation of Rule 31.17.

Under the circumstances of this case, the Board is of the opinion that Claimant cannot be held totally culpable for causing his injury. Coupled with a consideration of his good prior record and absence of safety-related complaints, we find that the penalty assessed was excessive and unduly harsh and that it should be reduced to a 5 day suspension. The record also supports Carrier's argument that Claimant did not suffer any monetary loss as a result of the discipline imposed since he was not cleared to return to work with full use of both hands until June 19, 1995, nor with limitations until May 31, 1995. Thus, no monetary relief will be ordered.

AWARD:

The claim is granted, in part. Carrier is directed to reduce Claimant's suspension from 30 to 5 days.

Margo R. Newman

Margo R. Newman
Neutral Chairperson

Thomas M. Rohling
Carrier Member

E. R. Spears
Employee Member

Fort Worth, Texas
February , 1997