

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 5905**

<b>BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES</b>	)
	) Case No. 6
and	)
	) Award No. 6
<b>ELGIN, JOLIET AND EASTERN RAILWAY COMPANY</b>	)

Martin H. Malin, Chairman & Neutral Member  
D. D. Bartholomay, Employee Member  
D. M. Gevaudan, Carrier Member

Hearing Date: April 20, 2000

**STATEMENT OF CLAIM:**

1. The dismissal of Track Foreman J. A. Leonard for his alleged failure to promptly report an injury he sustained on December 23, 1998 was without just and sufficient cause, excessive and arbitrary punishment (System File SAC-2-99/UM-3-99).
2. As a consequence of the violation referred to in Part (1) above, the Carrier shall now reduce the demerits significantly below the one hundred (100) level and return the Claimant to service with no loss of seniority and compensation for all time lost.

**FINDINGS:**

Public Law Board No. 5905, 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 January 4, 1999, Carrier notified Claimant to report for an investigation on January 13, 1999, concerning "the charge that you allegedly failed to promptly report the personal injury you sustained at approximately 12:30 p.m. on December 23, 1998, in violation of Maintenance of Way General Rules 1.28, 3.1, 3.2, and 3.3." The hearing was held as scheduled. On January 19, 1999,

Carrier advised Claimant that he had been found guilty of the charges and had been assessed sixty demerits which, when combined with demerits already on Claimant's discipline record, brought his total to 110 demerits. Pursuant to Carrier's policy that an employee who accumulates 100 demerits is dismissed from service, Carrier dismissed Claimant.

The facts are not in dispute. On December 23, 1998, Claimant was using a rope soaked in diesel fuel to heat pieces of rail that had pulled apart. Claimant found it necessary to add fuel to the rope. In the process, his right pant leg caught fire. Claimant was unable to extinguish the fire but did succeed in taking his pants off. Another employee extinguished the fire with a fire extinguisher.

Claimant told the members of the crew that he was not hurt. He put on another pair of pants and finished the job. He then called the Engineer Track and Structures and asked permission to leave early for personal reasons. He did not report the incident to the Engineer Track and Structures.

Claimant testified that while driving home, his leg started to tingle. When he arrived home, he examined the leg and noticed that it had started to blister. His wife took him to the hospital where he was diagnosed with second and possibly third degree burns. Although his wife advised him to report the injury, Claimant decided not to do so. He explained, "I felt it had already gone too far not reported, better continue with the current battle."

On December 25, Claimant was experiencing significant pain. He called the Engineer Track and Structures and reported the injury.

Clearly, Carrier proved each rule violation with which Claimant was charged. Even if we accept Claimant's testimony that he did not realize he was injured immediately after the incident,<sup>1</sup> by his own testimony, his leg started to tingle on the drive home. When he examined the leg at home, Claimant clearly knew he was injured. He observed that the leg was blistering and went to the hospital. At the hospital he was diagnosed with second and possibly third degree burns. At that point he made a conscious decision not to report the injury.

Claimant's violation was willful and deliberate. Moreover, Rule 1.28 provides: "Employees are prohibited from withholding information or failing to give factual report of any irregularity, accident or violation of rules. Violation of any part of this rule is sufficient cause for dismissal."

Certainly, having one's pants catch on fire, resulting in the discharge of a fire extinguisher, is an irregularity or accident, even if it did not result in personal injury. Claimant was obligated to

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<sup>1</sup>One the one hand, it is difficult to imagine that someone would not realize he was injured after his pants caught on fire. On the other hand, every member of Claimant's crew who witnessed the incident testified that Claimant stated he was all right and that claimant returned to work.

report the incident even if he did not believe he was injured. Claimant's failure to report the incident could have endangered the safety of other employees because, without a report of the incident, it is not likely that the fire extinguisher would have been recharged. The Organization points out that Claimant did report the incident on December 25 and that December 24 and 25 were holidays. The Organization maintains that this mitigates the seriousness of Claimant's failure to report the incident sooner. However, it is clear from the record that the only reason Claimant finally reported the incident was the pain he experienced on December 25. Had his original plan to deal with the injury himself been successful, the discharged fire extinguisher would not have been reported.

The Organization contends that the punishment imposed was excessive. It maintains that Claimant should not have been dismissed. However, the punishment imposed was not dismissal; it was the assessment of sixty demerits. It was the combination of that punishment with the fifty demerits already on Claimant's record that resulted in Claimant's dismissal.

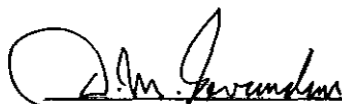
The Board does not review penalties de novo. Our role is limited to determining whether the penalty imposed was arbitrary, capricious or excessive. Considering all of the facts and circumstances revealed in the record, we are unable to say that the assessment of sixty demerits was arbitrary, capricious or excessive.

### AWARD

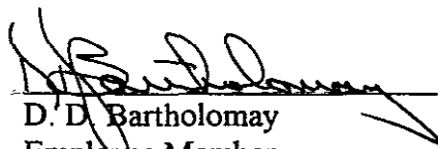
Claim denied.



Martin H. Malin, Chairman



D. M. Gevaudan  
Carrier Member



D. D. Bartholomay  
Employee Member

Dated at Chicago, Illinois, May 8, 2000.