

BEFORE PUBLIC LAW BOARD NO. 6043

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case Nos. 5 and 6

STATEMENT OF CLAIM:

1. The discipline [thirty (30) day suspension] imposed upon Mr. B. Harris for alleged '...violation of rule 1590, 1720, and 1730 from the Maintenance of Way Safety Rule Book, when the rail you were handling was apparently more than the machine was designed to handle causing the rail to strike Mr. Madison on the leg who was not in the clear.*** on January 6, 1997, was arbitrary, capricious, unwarranted, inappropriate, exceedingly harsh and in violation of the Agreement (Carrier's File 276 MofW).
2. The discipline [thirty (30) day suspension] imposed upon Mr. C. Madison for alleged '...violation of rule T of the Rules for Maintenance of Way and Structures, Dangerous Positions, and rule No. 1260 from the Maintenance of Way Safety Rule Book, when you failed to properly place yourself in the clear while handling rail at Beaumont, MS on January 6, 1997, was arbitrary, capricious, unwarranted, inappropriate, exceedingly harsh and in violation of the Agreement (Carrier's File 275 MofW).
3. As a consequence of the violation referred to in Part (1) above, Mr. B. Harris shall receive the benefit of the remedy prescribed by the parties in Rule 33 (i).
4. As a consequence of the violation referred to in Part (2) above, Mr. C. Madison shall receive the benefit of the remedy prescribed by the parties in Rule 33 (i).

FINDINGS

On January 6, 1997, Claimants B. Harris and C. Madison were assigned to a mobile gang in Beaumont, Mississippi, which was replacing welded rail at MP BH2.4.

Claimant Harris was temporarily operating a burro crane removing existing rail and Claimant Madison was assisting him on the ground by securing "rail dogs" to the rail allowing the crane to lift the piece of rail. Claimants were instructed to retrieve a 200-foot piece of new rail located about 100 feet ahead of the crane. Claimant Harris placed the boom over the rail while Claimant Madison secured the rail dogs. While Claimant Harris attempted to lift the rail, the boom brake and boom action of the crane failed and the rail swung out and struck Claimant Madison in the leg resulting in a personal injury.

Subsequently, the Claimants were notified to appear for an investigation to determine their responsibility, if any, in the personal injury sustained by Claimant Madison. On January 21, 1997, a hearing was held and it was determined that the Claimants did not perform their duties in accordance with the various safety rules. Consequently, Claimants Harris and Madison each received a thirty-day suspension.

The Organization filed a claim on behalf of the Claimants contending that the Carrier did not meet its burden of proof. The Organization argues that the crane that Claimant Harris was operating on the date in question was removed from service ten years prior to this claim because of design problems with respect to handling large pieces of rail and because of mechanical defects. The Organization points out that subsequent to the incident involved in this claim, the Carrier removed the crane from service again. The Organization contends that, according to witnesses, the Claimants were performing their duties in the usual and customary manner.

The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

With respect to the substantive issue, this Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimants were guilty of safety rule violations causing the accident which resulted in the injury to Mr. Madison. The record reveals that Mr. Madison was careless in his attempt to remove himself from danger before he signaled to Mr. Harris to move the piece of rail. In addition, Mr. Harris was guilty of several safety rule violations when he moved the equipment before ascertaining the safety of Mr. Madison's position. Both of the Claimants were inattentive to safety rules, and their inattention played a role in the injury to Mr. Madison that resulted.

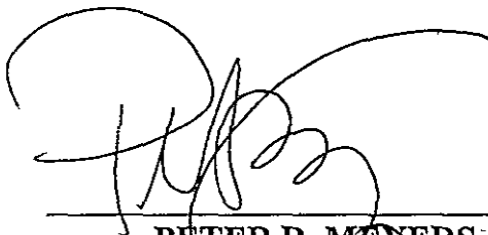
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The record reveals that the Claimants in this case had clean disciplinary records and there is no showing that they had ever been guilty of any previous safety violations. Claimant Harris has been employed by the Carrier for twenty-six years and Claimant Madison has been employed by the Carrier for two years. Given their seniority and their unblemished service records, this Board must find that the Carrier acted unreasonably and without just cause when it issued the Claimants thirty-day suspensions. Although the

injury to Mr. Madison was a serious result of the inattention of the two Claimants, this Board finds that a ten-day suspension would have been an appropriate response to the various rule violations. Consequently, we hereby order that the thirty-day suspension be reduced to a ten-day suspension and the Claimants be made whole for the difference.

AWARD:

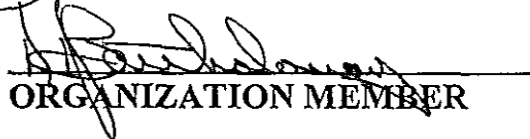
Claim sustained in part and denied in part. The thirty-day suspensions of the two Claimants shall be reduced to ten-day suspensions and they shall be made whole for the difference.



PETER R. MEYERS
Neutral Member


CARRIER MEMBER

Dated: 3/29/99


ORGANIZATION MEMBER

Dated: March 29, 1999