

**BEFORE PUBLIC LAW BOARD NO. 6152**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**and**

**CHICAGO, CENTRAL AND PACIFIC RAILROAD**

**Case No. 2**

**STATEMENT OF CLAIM:**

1. The five (5) day suspension assessed Trackman M. A. Wilbur for his alleged failure to remain alert and attentive to prevent and/or avoid injury to himself on August 3, 1995 was without just and sufficient cause and based on an unproven charge.
2. Trackman M. A. Wilbur shall now be allowed the remedy prescribed in Rule 35(g).

**FINDINGS**

On August 3, 1995, the Claimant sustained a personal injury while working as a trackman on an assignment to replace a defective rail at Mile Post 419.9. Claimant was part of a section crew working to change out a rail when the rail snapped and hit the claimant. As a result, the Claimant sustained a broken foot.

On August 8, 1995, the Claimant was notified to appear for an investigation into the incident that took place on August 3, 1995. The hearing was held on August 23, 1995. After the hearing, the Claimant was found guilty of violating Safety Rules 1, 8, and 23 because he had failed to remain clear of the track and prevent an injury to himself while changing out the broken rail at MP 419.9.

The Organization filed the instant claim contending that the Claimant had received no prior training in the procedure that was used on the date in question. The Organization

points out that the oxygen tank used for the welding torch ran empty before the crew completely cut through the rail. The Claimant's foreman than instructed the crew to change out the rail without thoroughly cutting the rail and instead used a "come-along" to pull the rail free. The Organization argues that the Claimant was inexperienced in this type of procedure.

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

This Board has reviewed the record in this case and we find that the Claimant was guilty of failing to remain alert and attentive to prevent an injury to himself on August 3, 1997. Moreover, this Board finds that the Claimant was a probationary employee and, therefore, not even eligible to have his discipline challenged under these Rules.

The record reveals that the Claimant admitted at the hearing that he did hear the warning, and that he did step over to the one side and then decided on his own to step over to the other side in violation of the warning. He did not properly vacate the area after hearing the warning. The injury occurred because of his wrongdoing.

Consequently, this Board must find that the Claimant has no ability to challenge this discipline because of the fact that he was a probationary employee. However, even if he did have that right, the record reveals that the Carrier has properly presented proof of the wrongdoing on the part of the Claimant. A five-day suspension was not an unreasonable, arbitrary, or capricious response by the Carrier to the Claimant's wrongdoing. Therefore, for numerous reasons, this claim must be denied.

**AWARD:**

Claim denied.

  
PETER R. MEYERS  
Neutral Member  
CARRIER MEMBERDated: 7/12/99  
ORGANIZATION MEMBERDated: 7-12-99