

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 45

STATEMENT OF CLAIM:

Appeal of the ten-day suspension issued to Claimant G. S. Rozas as a result of investigation held on August 26, 2003, in regards to Claimant's failure to properly perform duties resulting in a personal injury.

FINDINGS:

The Claimant was employed by the Carrier as a welder at the time of this claim.

On May 1, 2003, the Carrier issued a notice informing the Claimant to appear for a formal investigation in connection with an injury that he sustained on April 14, 2003, when a piece of steel struck and penetrated his right upper thigh. The Carrier indicated that, on the date in question on the Monroe Subdivision near MP SG 433.1, at approximately 1215 hours, the Claimant had been working with a Mr. J. A. Bolt and both the Claimant and Mr. Bolt were cutting and lining a buckled track. The Carrier pointed out that when Mr. Bolt struck a joint bar with a hammer, a piece of steel became airborne and struck the Claimant in the upper thigh. The Carrier also indicated that the Claimant had made a statement to Roadmaster Tucker that he had been located behind Mr. Bolt when the incident happened and that the Claimant admitted that he had failed to conduct a job

briefing when the activity changed. The Carrier charged the Claimant with improperly being in the "red zone" of the activity that he was engaged in and with violating Carrier's Safe Way Rule 1(B) and Operating Rule 501(4) for failing to properly perform his duties resulting in an injury.

After two postponements, the hearing took place on August 26, 2003. On September 12, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of a ten-day suspension effective September 22, 2003.

The parties being unable to resolve their dispute, this matter comes before this Board.

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 Claimant was guilty of violation of Carrier Safe Way Rule 1(B) and Carrier Operating Rule 501(4) on April 14, 2003. It is clear from the record that the Claimant failed to conduct a job briefing when the activity changed and that he made a false statement to the roadmaster when he indicated that he was located behind Mr. Bolt when the piece of steel became airborne and struck the Claimant.

Rule 1(B) requires that job briefings be conducted prior to work activity and subsequently when activity changes. The Claimant also failed to abide by that requirement.

Rule 501 requires honesty in making statements to Carrier officials. The record makes it very clear that the Claimant could not possibly have been behind

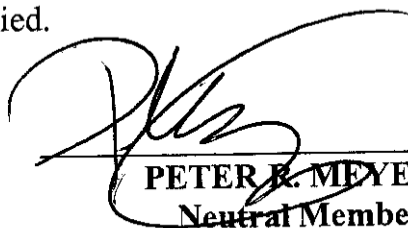
Mr. Bolt when the accident occurred.

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 actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case has been employed by the Carrier since 1979. He has previously received a reprimand letter and a warning letter, as well as some coaching and counseling. Given the seriousness of the wrongdoing in this case, and the previous disciplinary background of this Claimant, this Board cannot find that the issuance of a ten-day suspension to the Claimant was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: _____

4/30/04