

PUBLIC LAW BOARD NO. 7599

AWARD NO. 3

CASE NO. 3

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

vs.

Grand Trunk Western Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The suspension of Mr. J. Wagner for violation of USOR General Rule C - Alert and Attentive, USOR Rule 100 - Rules, Regulations and Instructions, LIFE U.S. Safety Rules - Core Safety Rules - Rights and Responsibilities, LIFE U.S. Safety Rules - Section II: Core Safety Rules, Clothing and Personal Protective Equipment (PPE) #3, LIFE U.S. Safety Rules - Section II: Core Safety Rules - Work Environment #13, LIFE U.S. Safety Rules - E-22 Personal Protective Equipment (PPE) Charts in connection with a personal injury sustained on December 14, 2011 was arbitrary, capricious, excessive and in violation of the Agreement (Carrier's File GTW-BMWED-2012-00002 GTW).
2. As a consequence of the violation referenced in Part 1 above, Claimant J. Wagner shall be granted the remedy in accordance with Rule 25, Section 4 of the Agreement."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was disciplined for alleged violation of Carrier's rules pertaining to personal safety. He was assessed a 20-day actual suspension that was reduced to 15-days. At the time of the incident in question, claimant had some 9 years of service with the Carrier. His work record contained a prior 3-day suspension.

The Organization raised procedural objections during the investigation regarding the notice

of charges. Rule 25(d) of the Agreement requires the notice to specify a "... precise charge ..." The Organization objected to the lack of rule citations in the notice. Where, as here, the governing notice rule does not expressly require that rules be cited, it is sufficient for the notice to satisfy the precision requirement by providing sufficient information about the incident in question to inform the claimant and the Organization of the focus of the investigation. In this case, the notice was sufficiently informative. The hearing officer was not remiss in overruling the objection and proceeding with the investigation.

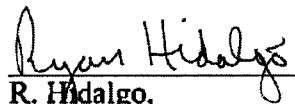
Turning to the merits, the basic facts are not in dispute. Claimant was a B & B carpenter who was installing metal siding on one of Carrier's buildings. They had been working in the rain during cold weather. Claimant's Carrier-supplied gloves had become soaked. While cleaning up inside the building, claimant removed his gloves to allow his hands to warm. A piece of the metal siding was lying on the floor. The piece had been sheared narrower so had a sharp cut edge along one side. Claimant knew of the sharp edge. Without putting his gloves back on, claimant lifted up the piece of siding and started to move it out of the way. It was approximately 13 feet long and 24 inches wide. As he moved, it struck the floor and slid in his right hand cutting a deep laceration into his right index finger. The wound required three sutures to close. After medical treatment, claimant returned to work and did not lose any further time.


Our review of the record finds it to contain substantial evidence in support of the Carrier's disciplinary decision. Under the circumstances, the record does not show the amount of the discipline to be arbitrary, capricious, or excessive. Accordingly, the claim must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. Hidalgo,
Organization Member


C. K. Cortez,
Carrier Member

Date: 11/4/2016