

PUBLIC LAW BOARD NO. 6341

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
) Case No. 2
and)
) Award No. 3
DULUTH, MISSABE AND IRON RANGE RAILROAD COMPANY)

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

Hearing Date: November 16, 2000

STATEMENT OF CLAIM:

1. The two (2) day suspension assessed Machine Operator C. A. Follmer for alleged damage to a power switch on July 20, 1999 while operating a front end loader was without just and sufficient cause and based on an unproven charge.
2. Machine Operator C. A. Follmer shall now be compensated for the wage loss suffered because of the suspension.

FINDINGS:

Public Law Board No. 6341, 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 August 9, 1999, Carrier notified Claimant to report for an investigation on August 20, 1999, concerning her alleged violation of Rules 1, 6, 7, and 12, of the General Rules of Conduct, and Section F, Rule 2, of the Engineering Department Rules of Conduct, for allegedly damaging a power switch while operating a front end loader on July 20, 1999, and failing to report the

damage. The hearing was held as scheduled. On September 1, 1999, Carrier advised Claimant that she had been found guilty of the charges and had been assessed a two day suspension.

The critical issue in this case is whether Carrier met its burden of proof. The Organization maintains that Carrier failed to prove the charges and that it is speculative as to whether Claimant caused the damage. Carrier concedes that no one saw Claimant cause the damage but maintains that the circumstantial evidence that Claimant was responsible was compelling.

This Board sits as an appellate body. We do not find facts de novo. Our task is to review the record developed on the property to determine whether the findings made on the property are supported by substantial evidence. Substantial evidence is such evidence as would lead a reasonable person to conclude that Carrier met its burden of proof, i.e., that it is more likely than not that the Claimant caused the damage.

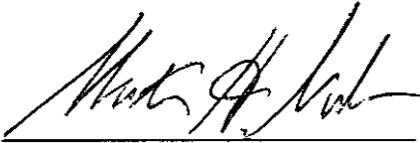
The record reflects the following. On July 20, 1999, Claimant was operating a front end loader in Collingwood, Minnesota. The loader had rubber wheels. Around 5:45 p.m., it was discovered that power switch number three at location two had a broken frame. It appeared to have been run over by a piece of heavy equipment earlier that day.

Claimant was one of three loader operators in the area that day. One of the other two loaders was rail mounted. Thus, that loader could not have caused the damage. The operator of the other loader advised the foreman that he did not run over the power switch. Claimant, on the other hand, advised the foreman that her rear tire slipped off the track before she got through the switch and that it was possible she caused the damage but, when she inspected the situation, she was almost clear of the switch points, the motor was behind the machine, and she saw no damage.

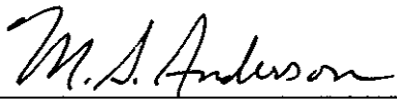
Thus, the circumstantial evidence is that a piece of heavy equipment damaged the switch, one of the three pieces of equipment operating in the vicinity was rail mounted and could not have caused the damage, the operator of a second piece of equipment denied running over the switch and Claimant operated over the switch and her rear tire slipped off the rail, an action that could have caused the damage. Although Claimant inspected the situation at the time she slipped off the rail and did not see any damage, a reasonable person could conclude from this evidence that it was more likely than not that Claimant caused the damage when her tire slipped off the rail. Accordingly, we find that Carrier proved the charge by substantial evidence and we must deny the claim.

AWARD

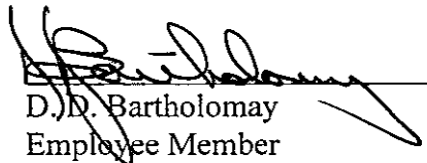
Claim denied.



Martin H. Malin, Chairman



M. S. Anderson
Carrier Member



D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, January 16, 2001