

PUBLIC LAW BOARD – NO. 6461

Case No. 17

Award No. 17

PARTIES

to

DISPUTE:

Brotherhood of Maintenance of Way Employees

-and-

Grand Trunk Western Railway

STATEMENT OF CLAIM:

“Claim of work equipment mechanic J. G. Crandell, #131123, for exoneration of all charges and discipline from his record for a three (3) day “record” suspension for negligence in connection with a personal injury to himself on December 3, 2003.”

FINDINGS: This dispute arose as a result of the Carrier charging the claimant with the following offense:

“your alleged responsibility, if any, for negligence in connection with the personal injury Mr. Jeff Crandell incurred on December 3, 2003 at approximately 1230 hours at Port Huron, Michigan. This incident occurred while rolling the cat tamper clamp frame jack over and losing control of the machinery, causing both of you to strike your heads together.”

Facts involved in this case disclose the claimant attempted to tip a “cat tamper frame jack” (weighing app. 2000 lbs.), but found he was unable to do it by himself. Therefore, the claimant solicited his co-worker, backhoe operator, R. Vanderpool to assist him with the task. The employees used a lining bar in their attempt to tip the rail clamp and, in the process; they slammed their heads together, resulting in the claimant sustaining two small fractures in his lower orbis.

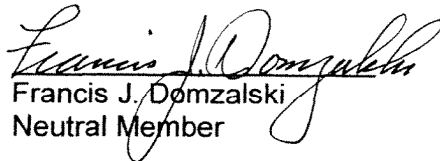
The Carrier asserts the claimant was the employee in charge of the task, and had an inherent obligation to properly plan and perform the work so as to avoid injury to himself or others. They contend, aside from the fact that they should have utilized the backhoe machine that was nearby to perform the weighty task, they clearly failed to properly communicate with each other as to what actually they were going to do, and should be held accountable for their unsafe actions.

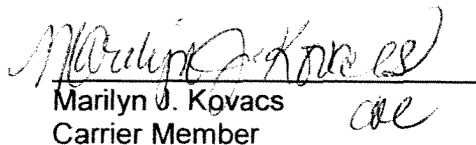
In his defense, the claimant asserts that in the past he performed this task by himself without incident. He contends he didn't feel confident in using the backhoe because it was clumsy and, in his opinion, it was safer to do the task in the manner in which they did.

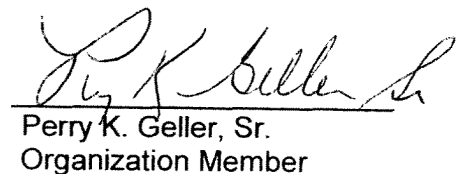
After a thorough review of the lengthy hearing transcript, we find the Carrier has met its burden of proof in this case. The claimant's own testimony (pg 68), shows that he acknowledged the fact that his co-worker did not exactly understand what he wanted him to do. Clearly, there is no substitute for safety, and in this case the record abundantly shows the claimant performed the task in an unsafe manner and was guilty of the offense for which he was charged.

Therefore, in consideration of the proven offense, we have no proper basis to disturb the Carrier's determination in this case.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


Marilyn J. Kovacs
Carrier Member


Perry K. Geller, Sr.
Organization Member

Dated: 2-24-05