

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6466

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

GRAND TRUNK WESTERN RAILROAD, INCORPORATED

)
) Case No. 5
)
) Award No. 1
)

Martin H. Malin, Chairman & Neutral Member
P. K. Geller, Employee Member
M. J. Kovacs, Carrier Member

Hearing Date: April 16, 2003

STATEMENT OF CLAIM:

1. The discipline (disqualification as foreman and time held out of service) assessed Foreman Gerald L. Bradstrom for his alleged violation of track safety rules when he was occupying Main Track No. 2 on March 27, 2002 was without just and sufficient cause and excessive and undue punishment (Carrier's File 8365-783)
2. Foreman Gerald L. Bradstrom shall now be compensated for all wage loss suffered plus all benefits and credits denied and have his record cleared of the incident.

FINDINGS:

Public Law Board No. 6466, 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 April 3, 2002, Carrier notified Claimant to appear for an investigation on April 9, 2002, concerning his alleged violations of Track Safety Rules 100, 300, 400, 500 and 902, in connection with an incident on March 27, 2002, when he was allegedly fouled Main Track No. 2 without proper authority. The hearing was held as scheduled. On April 26, 2002, Carrier notified Claimant that he had been found guilty of the charges and assessed a thirty day suspension, and disqualified as a Track Foreman for one year. Carrier subsequently reinstated Claimant's Track Foreman's rights effective July 1, 2002.

The record reflects that on March 27, 2002, Claimant and two Trackmen were clearing snow from a switch when one of the Trackmen noticed a pull-apart on the main line. The employees prepared to use a controlled burn to repair the defect. Claimant was responsible for

getting track authority. Claimant contacted the Dispatcher and advised the Dispatcher that his location was MP 110;97 and that he and his crew would be working west of McKinley. In fact, Claimant and his crew were working east of McKinley. As a result, the Dispatcher placed a block west of McKinley between McKinley and South Bend instead of blocking the track where Claimant and the two Trackmen were working. Because the track where Claimant and the two Trackmen were working was not blocked, Train 761 came through. The three employees were able to run out of the way of the train and no one was hurt.

The record thus reflects that Claimant gave the Dispatcher inaccurate information. Furthermore, the record reflects that Claimant failed to write down the track and the time that the track was taken out of service. Both actions were acts of serious negligence that could have led to catastrophic results. We conclude that Carrier proved the charges by substantial evidence.

The Organization objects to Carrier's having withheld Claimant from service pending investigation. We do not agree. Claimant's negligence was a very serious violation of Carrier's safety rules. Carrier acted within its rights by withholding Claimant from service.

The Organization objects that the Dispatcher was primarily at fault and Carrier did not withhold the Dispatcher from service. The Dispatcher was contributorily at fault because the Dispatcher did not check Claimant's location against his maps. Had he done so, he would have seen that Claimant was east of McKinley, not west of McKinley. However, the Dispatcher's negligence does not excuse Claimant's negligence. The record reflects that the Dispatcher was disciplined, although he was not withheld from service pending investigation. The Dispatcher, however, was a member of a different craft and subject to a different Agreement. We cannot say that Carrier's failure to withhold the Dispatcher from service invalidated its withholding of Claimant or the ultimate discipline assessed against Claimant.

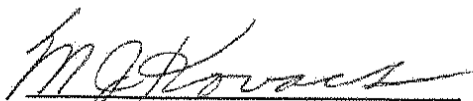
Viewing the record as a whole, and in light of the seriousness of the safety rule violations, we cannot say that the penalty imposed was arbitrary, capricious or excessive. Accordingly, the claim must be denied.

AWARD

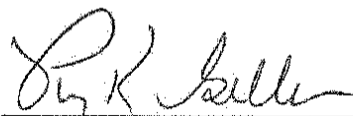
Claim denied.



Martin H. Malin, Chairman



M. J. Kovacs
Carrier Member



P. K. Geller
Employee Member

Dated at Chicago, Illinois, September 30, 2003