

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6466

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

GRAND TRUNK WESTERN RAILROAD, INCORPORATED

)
) Case No. 8
)
) Award No. 5
)

Martin H. Malin, Chairman & Neutral Member

P. K. Geller, Employee Member

M. J. Kovacs, Carrier Member

Hearing Date: December 11, 2003

STATEMENT OF CLAIM:

1. The discipline (twenty demerits) imposed on First Class Carpenter R. E. Crandall for his alleged failure to comply with Operating Rule C and Safety Rule 14 in connection with an injury sustained on January 13, 2003, was without just and sufficient cause and based on an unproven charge (Carrier's File 8365-799)
2. First Class Carpenter R. E. Crandall shall now have the twenty demerits and all reference to this incident removed from his personal record.

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 January 31, 2003, Carrier notified Claimant to appear for an investigation on February 11, 2003, concerning his alleged failure to comply with Operating Rule C and Safety Rule 14, in connection with an injury he sustained on January 13, 2003. The hearing was held as scheduled. On March 3, 2003, Carrier notified Claimant that he had been found guilty of the charge and had been assessed twenty demerits.

The record reflects that on January 13, 2003, Claimant was on a ladder, painting the ceiling in a restroom at the David Road Tower Office, when he fell off the second rung and injured his shoulder. The accident occurred at approximately 2:15 p.m. The Structure Supervisor interviewed Claimant in the hospital at approximately 5:30 p.m. Claimant told the Structure Supervisor that he was on the ladder, dipped his paint brush in a paint bucket and when he went to move the brush back up to paint, his heel hit the urinal partition causing him to lose

his balance and fall to the floor. Claimant's description of the accident thus indicated that Claimant was not maintaining three point contact with the ladder, as required by Rule 14. The Supervisor opined that Claimant could not have fallen if he had been using three point contact. The Supervisor further opined that Claimant did not take care to prevent injury to himself, as required by Rule C.

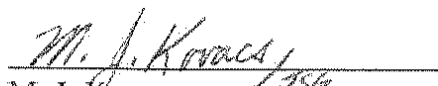
The Organization objected to the interview because Claimant had taken pain medication. However, there is no evidence in the record that Claimant's cognitive functioning was impaired by the medication and Claimant testified at the hearing that he remembered what he told the Supervisor during the interview. Having reviewed the record as a whole, we find that Carrier proved the violations by substantial evidence.

AWARD

Claim denied.



Martin H. Malin, Chairman



M. J. Kovacs
Carrier Member



P. K. Geller
Employee Member

Dated at Chicago, Illinois, March 13, 2004