

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6466**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

and

**GRAND TRUNK WESTERN RAILROAD, INCORPORATED**

)  
) Case No. 10  
)  
) Award No. 6  
)

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 (time served, amounting to an eighteen day suspension, and disqualification from operating rules and on-track safety rules) imposed on Welder C. Dumas for his alleged violation of On-Track Safety Rule 100 when he allegedly parked Welder's Truck 179471 within the four foot fouling point at Mile Post 33.3, at 9:30 a.m. on May 8, 2003, was without just and sufficient cause and based on an unproven charge (Carrier's File 8365-808)
2. Welder C. Dumas shall now be compensated for all time post and all reference to this incident shall be 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 May 8, 2003, Carrier notified Claimant to appear for an investigation on May 15, 2003, concerning his alleged failure to comply with On-Track Safety Rule 100 when he allegedly parked Welder's Truck 179471 within the four foot fouling point at Mile Post 33.3, at 9:30 a.m. on May 8, 2003. The hearing was rescheduled to and held on May 14, 2003. On May 28, 2003, Carrier notified Claimant that he had been found guilty of the charge and had been assessed time served, from May 9 to May 27, 2003, and was disqualified on the operating rules and the on-track safety rules.

The record reflects that on May 8, 2003, Claimant and a Trackman drove to the site with Claimant operating Welder Truck 179471. Claimant parked the truck, opened the doors and

noticed that one of the shelves was dislodged. Claimant was repairing the shelf when the Trackman, who was serving as watchman, told him a train was coming. Claimant closed the truck doors and, as the train went by, it sucked the doors open and struck a door. With the doors closed, the truck was approximately four feet, six inches from the near running rail, but with the doors open, the truck was within four feet of the rail.

Rule 100 provides:

Each roadway worker is responsible for determining that on-track safety is provided before fouling any track or assuming a position from which he or she could potentially foul a track. A roadway worker or roadway machine is fouling a track within four feet of the field side of the near running rail.

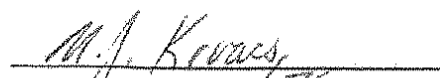
The Track Supervisor testified that if any part of a truck's equipment swings out within the fouling point, it is considered to be fouling the track. He further testified that Claimant told him that apparently the door did not latch when he closed it. The Trackman testified that if the door latches on the truck were tricky and if one did not put one's weight into the rubber, the door could be sucked open when a train passes. The Yard Foreman testified that Claimant acknowledged that he was parked too close to the rail. Considering the record as a whole, we find that Carrier proved the charge by substantial evidence.

We turn to the penalty assessed. The Yard Foreman and the Track Supervisor testified that in the past they had seen some incidents handled informally with a waiver and assessment of demerits. The Organization contends that Carrier should have handled the instant matter in the same way. Carrier certainly has the option to exercise its discretion to handle a matter informally. As an appellate body, however, our role in reviewing the penalty is confined to determining whether it was arbitrary, capricious or excessive. The evidence falls short of establishing that Carrier had a policy of handling these incidents informally or that Carrier always handled these incidents informally. We recognize that Claimant had a good record prior to the incident in question. However, the incident involved a collision between a train and part of a truck, a very serious matter. Under the circumstances, we cannot say that the penalty was arbitrary, capricious or excessive.

### AWARD

Claim denied.

  
Martin H. Malin, Chairman

  
M. J. Kovacs  
Carrier Member

  
P. K. Geller  
Employee Member

Dated at Chicago, Illinois, March 13, 2004