

PUBLIC LAW BOARD NO. 6490

AWARD NO. 3

CASE NO. 3

**PARTIES TO
THE DISPUTE:**

Brotherhood of Maintenance of Way Employees

vs.

Duluth Missabe and Iron Range Railway Company

STATEMENT OF THE CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The ten (10) day suspension assessed Track laborer M. E. Ojard for his alleged failure to safely perform his duties on November 7, 2001 when he sustained an injury to his foot was without just and sufficient cause and based on an unproven charge.
2. Track Laborer M. E. Ojard shall now be compensated for all wage loss suffered due to the ten (10) day suspension (December 17 through December 31, 2001) and have his record cleared of the incident.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant's foot was injured when a piece of rail tipped over on it. He and his co-workers were engaged in removing spikes from a partial track panel at the time. The panel had been set on uneven ground and other pieces of rail and cross ties were also in the area. The piece of rail that tipped onto his foot had a shorter piece of rail under it. When another employee loosened the remaining spike holding the rail, it tipped over on Claimant, who had his foot adjacent to the rail approximately seven ties away.

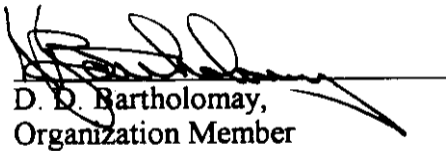
Substantial evidence in the record supports the Carrier's determination that a proper inspection of the work area by all on the crew could have averted the injury. The Carrier was entitled to conclude that stress on the rail would cause it to move upon being released from the spike and that such movement was reasonably foreseeable by Claimant. The testimony of Carrier's witness opined that Claimant should have had his foot on the ground and not up on the tie adjacent to the rail.

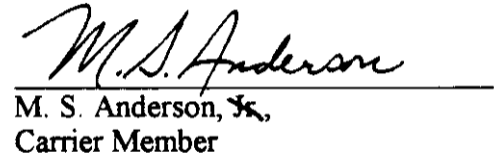
Although the foreman accepted full responsibility for the incident, Carrier's rules allocate to Claimant a significant share of the responsibility for the safety of others and himself.

In light of the prior 3-day and 5-day suspensions in Claimant's record, we do not find the discipline assessed to be unreasonable.

AWARD: Claim denied.


Gerald E. Wallin, Chairman
and Neutral Member


D. D. Bartholomay,
Organization Member


M. S. Anderson, Jr.,
Carrier Member

Dated: February 13, 2003