

**BEFORE PUBLIC LAW BOARD NO. 6621**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**UNION PACIFIC RAILROAD COMPANY**

**Case No. 13**

**Statement of Claim:** Claim of the System Committee of the Brotherhood that:

1. That the Union Pacific Railroad Company violated Rules 1 and 48 of the current agreement when it found Mr. Dennis A. Macchione [Claimant] guilty of three Safety Rules and assessed Claimant UPGRADE Level 2 discipline, one day off with pay to develop Corrective Action Plan.
2. As the Carrier violated the terms and provisions of the current Agreement, the Carrier shall be ordered to exonerate the Claimant and remove all record of this incident from the Claimant's personal record.

**Background:**

Dennis A. Macchione, an operator of a ballast regulator, was charged with multiple rule violations because on May 21, 2002 he lost his footing on ballast resulting in muscle strain.

Following a hearing held on June 21, 2002, by letter dated July 31, 2002 the Carrier assessed Claimant with a Level 2 Discipline for violating three rules: (1) Rule 1.1.2, Alert and Attentive; (2) Safety Rule 80-1, Avoiding Slips, Trips & Falls; and (3) Safety Rule 80-2, Precautions

Against Avoiding Slips, Trips & Falls, which provide as follows:

**Rule 1.1.2, Alert and Attentive**

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

**Safety Rule 80.1, Avoiding Slips, Trips and Falls**

Observe safety practices that eliminate slips, trips and falls.

- Perform your work to avoid creating hazards.
- Maintain good housekeeping.
- Clean up spills.
- Erect barricades, signs, or cones where appropriate.

Avoid objects, obstructions, holes and openings and be alert to underfoot conditions. Aisles, stairways and walkways must be kept free of tools, trucks, materials, equipment and obstructions.

Safety Rule 80.2, Precautions Against Slips, Trips, and Falls

Take precautions to avoid slipping on:

- Slick surfaces such as recently washed, waxed floors, oil, grease or soap on the walkway.
- Snow, ice, wet spots or other hazards caused by inclement weather. Use appropriate footwear and accessories and/or spread sand/salt mixture (as appropriate) on ice before proceeding when icy conditions exist.

When walking keep your eyes on the pathway and if hazardous underfoot conditions exist:

- Keep your hands out of pockets for balance.
- Take short, deliberate steps with toes pointed outward.
- When stepping over objects, such as rails, be sure your foot is flat before moving your rear foot.

**Carrier's Position:**

The Carrier contends that, because of Claimant's experience as a ballast regulator, he should have been aware that the ballast was loose and should have exercised appropriate caution when he walked down the shoulder of the ballast. As evidenced by Claimant's injury, he did not take the necessary precautions under the circumstances to prevent himself from slipping.

**Organization's Position:**

The Organization claims that it is undisputed that there was no witness to the incident, and that the Carrier's witness who investigated the matter stated that Claimant's work, by its very nature, creates loose ballast conditions. In addition, the Organization argues that, by placing cones around his machine so that he could halt work for a short time for personal reasons, Claimant was merely following the Carrier's own rules. Moreover, the Organization contends that, in attempting to recreate the conditions of the incident, the Carrier's investigator did not

place the ballast regulator in the same position as it had been on the day of the incident.

**Findings:**

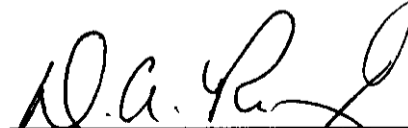
There was no witness to the incident on May 21, 2002, other than Claimant, so the Carrier attempted to recreate the incident based on what Claimant had reported. Having recreated the conditions leading to the incident, the Carrier concluded that Claimant had violated the three rules cited above. The Carrier, however, was unable to point to how Claimant specifically violated any of the rules. Instead, the Carrier merely concluded that Claimant had failed to exercise the precautions required by the rules as he walked over the loose ballast.


The Carrier bears the burden of proving that Claimant violated one or more of the rules. It has failed to do so in the instant case, because it was unable to prove how Claimant neglected any specific duty set forth in the rules.

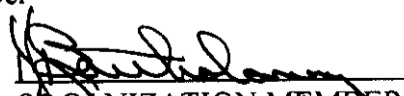
For the foregoing reasons, the Board finds that the Carrier did not meet its burden of proving that Claimant violated Rule 1.1.2, Alert and Attentive, Safety Rule 80-1, Avoiding Slips, Trips & Falls, and/or Safety Rule 80-2, Precautions Against Avoiding Slips, Trips & Falls. As a remedy, the Carrier is directed to expunge the Level 2 Discipline from Claimant's personal record.

**Award:**

The claim is sustained. The Carrier is directed to expunge from Claimant's record the Level Discipline assessed him as a result of the May 21, 2002 incident.

  
CARRIER MEMBER  
DATED: 7-16-03

  
JOAN PARKER, Neutral Member

  
ORGANIZATION MEMBER  
DATED: 7-16-03