

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CANADIAN NATIONAL RAILROAD**

Case No. 3

STATEMENT OF CLAIM:

Appeal of the thirty-day suspension issued to Claimant R. Peterson for alleged violation of Carrier Operating Rules and LIFE Safety Rules in connection with a derailment that occurred on July 14, 2005.

FINDINGS:

By letter dated July 15, 2005, the Claimant was notified to appear at a formal hearing and investigation to determine whether the Claimant's "actions or omissions violated any company rules, policies, procedures or instructions" in connection with a derailment that occurred on July 14, 2005, near Waukesha Subdivision, Milepost 34.9 at Prairie View, Illinois. The investigation was conducted as scheduled on July 21, 2005. By letter dated August 1, 2005, the Claimant was notified that as a result of the hearing, he was found guilty of violating Carrier Operating Rules and LIFE Safety Rules, and therefore was deemed responsible for the derailment. This letter further informed the Claimant that he was being assessed a thirty-day suspension. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's assessment of a thirty-day suspension. The Carrier denied the claim.

The Carrier initially contends that the Claimant failed to perform his assigned work properly, safely, and in accordance with the rules. The Carrier maintains that the record demonstrates that the Claimant failed to choose the safe course. The Claimant

was the assigned operator and the employee in charge at the time of the incident. The Carrier points out that the only defense offered for the Claimant's failure to use the Brandt truck was that the Claimant's helper was hot and needed to "cool off" in the air conditioning of the truck. The Carrier argues that even if such a defense were acceptable, which it is not, the Brandt truck still should have been used after the helper "cooled off."

The Carrier asserts that instead of using the Brandt truck, the Claimant chose to bleed off the airbrakes, release the handbrake, and allow the car to roll down a seven percent grade over a derail. Moreover, the Carrier points out that the Claimant failed to first test the handbrake, as required by the rules. The Carrier insists that the Claimant therefore had no idea of whether or not he was going to be able to stop the car by using the handbrake. The Carrier maintains that this action on the part of the Claimant clearly was unsafe.

The Carrier additionally argues that the Claimant continues to be oblivious to the seriousness of his unsafe actions. The Carrier emphasizes that there was a real potential for serious bridge damage and the disruption of mainline commuter service.

The Carrier insists that the Claimant's service, discipline, and incident records all were taken into consideration in the determination of the amount of discipline to be assessed in this case. The Carrier points out that these type of incidents are very serious and have resulted in the dismissal of employees in the past.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that there is no evidence that the Claimant is at

fault for the derailment. The Organization argues that the Claimant was following normal procedure, which is to let gravity do the work. The Organization additionally asserts that the Claimant did what he had to do to test the brakes, but these cannot be fully tested unless the car is moving. The Organization maintains that the Claimant followed the rules.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier rules which eventually led to a derailment. The record reveals that the Claimant failed to make the appropriate tests before he moved the car involved.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was issued a thirty-day suspension for his wrongdoing. Given the Claimant's seniority with the Carrier, as well as the background facts in this case, this Board finds that the Carrier acted unreasonably when it issued that thirty-day suspension to the Claimant. Therefore, this Board orders that the thirty-day suspension be reduced to a fifteen-day suspension. The Claimant shall be made whole for the