

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CN-WISCONSIN CENTRAL RAILROAD**

Case No. 9

STATEMENT OF CLAIM:

Appeal of the thirty-day deferred suspension issued to Claimant J.D. Raab for alleged violation of Engineering Life Manual Section II, Rule 1.b, job safety briefings, in connection with an incident that occurred on March 23, 2006

FINDINGS:

By letter dated April 5, 2006, the Claimant was notified to appear at a formal hearing and investigation to "ascertain the facts and to determine whether or not you violated company rules, instructions or policies when you allegedly failed to use a sling when lifting a steel grillage with the boom truck" at the Carrier's material yard in North Fond du Lac, Wisconsin. After a postponement, the investigation was conducted on May 5, 2006. By letter dated May 25, 2006, the Claimant was notified that as a result of the hearing, he was found guilty of violating Engineering Life Manual Section II, Rule 1.b., job safety briefings. This letter further informed the Claimant that he was being assessed a thirty-day deferred suspension. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's assessment of a thirty-day deferred suspension. The Carrier denied the claim.

The Carrier initially contends that there is relevant evidence to support the conclusion that the Claimant violated the cited rule. The Carrier asserts that the record establishes that the Claimant and his co-worker did not conduct a proper job briefing. The

Carrier maintains that the failure to conduct a proper job briefing resulted in a piece of material slipping from the grapple of the boom truck, striking a piece of plate steel on which the Claimant's co-worker was standing, and ejecting the Claimant's co-worker into the air and resulting in an injury.

The Carrier points out that a better means of rigging could have been used while performing the lift, and this could have prevented the injury. The Carrier argues that the Claimant and his co-worker chose the negative, instead of the positive, situation in performing their duties on the date in question.

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

The Organization initially contends that the record shows that job briefings were conducted. As for the assertion that the loading process should be stopped for another job briefing each time a piece of equipment of differing weight, size, or dimension is loaded, the Organization insists that this was a routine operation, and there was no reason to expect trouble. With regard to the Carrier's assertion that a "better means of rigging" could have been adopted, the Organization emphasizes that several lifting accessories exist that may have afforded safer lifting of that particular piece of equipment, but the Carrier did not provide any of those accessories. Instead, the only additional piece of equipment that the Carrier provided was a single, feeble strap. The Organization asserts that because the Claimant had performed this identical lift in the past, it would be inconceivable to "fool around" with trying to insert a strap beneath a 700-pound weight laying flat on a flat surface. The Organization insists that the Claimant chose the safest

method to lift that piece of material.

The Organization asserts that this incident was caused by equipment failure, and it cites a report describing internal failures of valves in the grapple mechanism as conclusive evidence of defective equipment. The Organization argues that there also were "a lot of piles" of poorly stacked, loose material. The Organization contends that a number of Carrier officials may have passed these piles of junk without assessing potential danger.

The Organization emphasizes that although an accident occurred, this does not, by itself, constitute a rule violation. The Organization insists that the Claimant did not violate any rules, so the discipline at issue should be immediately reversed and removed from the Claimant's record.

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, instructions, and policies when he failed to use a sling when lifting a steel grillage with a boom truck on March 23, 2006.

The record reveals that the Claimant did not use the proper rigging that should have been used when performing the lift. The Claimant was the operator and should have used the proper lifting technique; and if he had, the injury that resulted may not have

occurred. It was the boom operator's responsibility to use the sling and he did not do so.

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.

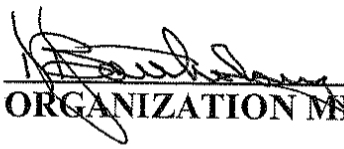
The record reveals that the Claimant in this case was issued a thirty-day deferred suspension. Given the Claimant's length of service as well as his previous record, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.

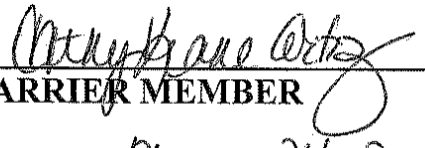


PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 5-24-07



CARRIER MEMBER

DATED: May 24, 2007