

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYES DIVISION)	
IBT RAIL CONFERENCE)	Docket No. 17
)	
and)	
)	
CANADIAN NATIONAL/WISCONSIN)	
CENTRAL LTD.)	Claimant: C. Klarich

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The discipline in the form of a fifteen (15) day deferred suspension for one (1) year imposed upon Foreman C. Klarich for the alleged violation of USOR - General Rule A - Safety, USOR - General Rule C – Alert and Attentive, USOR - General Rule W - Job Briefing, LIFE US Safety Rule- Safety Briefing B3, Point out and protect against potential hazards, LIFE US Safety Rules - Core Safety Rules, Work Environment Paragraph 13, protect against unsafe conditions and LIFE US Safety Rules - E-12 Hand Tools Jacks, recommended practices in connection with an incident resulting in a personal injury sustained by him on Monday, December 27, 2010 is on the basis of unproven charges, unjust, unwarranted and in violation of the Agreement (Carrier's File WC-BMWED-2011-00005).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Klarich shall receive the remedy prescribed in Rule 31 I of the Agreement."

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Organization contends that the Claim should be granted because the Claimant's injury was through no fault of his own. In support, the Organization points to: the evidence that contradicts the supervisor's statement that more than one track jack should have been used; the testimony that appropriate risk assessments and job briefings were held to specifically address use of the track jack, truck hitch and clevis; the testimony and admission that a coworker raised the track jack without asking, informing coworkers and without the proper tool; that the coworker who caused the jack to fail signed a waiver for the conduct.

The Carrier responds that Claimant failed to perform a proper job briefing and placed his finger in the pinch point. His injury was caused by his failure to follow the Rules and the evidence was clear.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

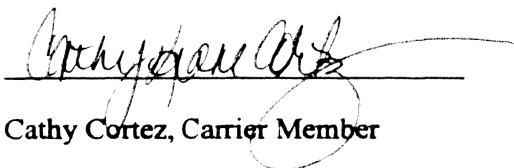
After a review of the record, the Board finds that there was not substantial evidence in the record to prove the misconduct. An employee getting injured does not automatically establish that the employee was violating a Rule. Here, the evidence establishes that job briefings were conducted regarding the rail, track jack, and the other equipment and vehicle. Further, there was evidence that the jack failed not due to Claimant's action – or inaction. Rather, the evidence establishes that a coworker manipulated the track jack without asking, informing coworkers and without the proper tool. Moreover, the coworker who caused the jack to fail signed a waiver for the conduct. That coworker's misconduct cannot be imputed to Claimant in the instant matter.

Award:

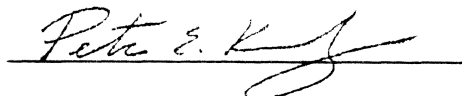
Claim sustained.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Peter Kennedy, Organization Member

Signed on June 10, 2013