

SPECIAL BOARD OF ADJUSTMENT NO. 1122

BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYEES)	
	AWARD NO. 56
and)	CASE NO. 56
NORTHEAST ILLINOIS REGIONAL)	Carrier File No. 8-7-554
COMMUTER RAILROAD CORP.,)	
(METRA))	

STATEMENT OF CLAIM:

Claimants R. Freeny, T. Hubbard, J. Jefferson, and R. Sparks appeal of discipline for failure to conduct a proper job briefing, failure to work safely as a team, and failure to remain alert and attentive in order to prevent an injury to yourself or others, in violation of Metra Safety Rules 100.5, 1.1.2 and 100.4.

FINDINGS:

Special Board of Adjustment No. 1122, upon the whole record and all 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, and that the Board has jurisdiction over the dispute herein.

On February 22, 2008, the Claimants were members of a B&B gang assigned to empty timber and angle iron from a truck that needed to be repaired. In the course of unloading the truck, Claimant Freeny sustained an injury.

A hearing was held on the matter and the Carrier found the Claimants guilty of violating Metra Safety Rules 100.5, 1.1.2, and 100.4. Each Claimant was assessed a three-day deferred suspension.

The Organization filed the instant claim on behalf of the Claimants, arguing that the charges were not proven and that the hearing was nothing more than a fishing expedition. The mere fact that an accident occurred does not establish culpability, the Organization maintained. Moreover, it argued that the Claimants were not afforded due process because the outcome in this matter was predetermined.

The parties were unable to resolve the issue at hand, and the matter now comes before the Board for decision.


At the outset, the Board finds that the Claimants were afforded due process, notwithstanding the Organization's contention to the contrary. Our review of the record establishes to the Board's satisfaction that the hearing officer conducted the investigation fairly and impartially. There is no evidence that the hearing officer had already decided upon the outcome when he conducted the hearing. In addition, the Organization and the Claimants were afforded full opportunity to present their evidence and arguments. Based on this factual predicate, the Board rejects the Organization's argument that Claimants were not afforded due process.

On the merits, we reviewed the evidence and testimony and carefully examined the photographs that were taken at the scene. There is substantial evidence to support the finding that the Claimants violated various Carrier safety rules as charged. Essentially, the Claimants failed to use common sense when they unloaded 750 pounds of timber and angle irons onto spacer bars, causing the load to give way when one of the spacer bars broke. The spacer bars were not designed or intended to support that weight, as the Claimants knew or reasonably should have known. Given the extensive experience of the Claimants, it is clear they should have approached the task in a much safer manner and avoided the accident that occurred on that date in question.

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. The Claimants' actions were a breach of rules that are in place to ensure safe operating procedures. The penalty imposed was not arbitrary or unreasonable under the circumstances. Accordingly, the claim must be denied.

AWARD

Claim denied.


ANN S. KENIS
Neutral Member

Dated this 27th day of June, 2008.