

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

Case No. 22

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: CSX Transportation, Inc.

STATEMENT OF CLAIM:

Five (5) day suspension assessed to J. C. Alford,
ID# 171247 as a result of investigation held
February 28, 1991, at Florence, South Carolina.

FINDINGS:

Claimant J. C. Alford was employed by the Carrier as a
machine operator.

On February 15, 1991, the Carrier notified the Claimant to
appear for a formal investigation in connection with the
following charge:

Account of on duty injury you sustained February 6,
1991, you are being charged with possible violation
of Rule 525 and 560 (C), (D), of the CSX
Transportation Safety Rules.

After one postponement, the hearing took place on February 28,
1991. On March 4, 1991, the Carrier notified the Claimant that
he had been found guilty of the charge against him and was being
assessed discipline of five days' actual suspension, starting
March 11, 1991, and ending March 15, 1991. Thereafter, the
Organization filed a claim on Claimant's behalf, challenging his
suspension.

This Board has reviewed the evidence and testimony in this
case, and we find that there is not sufficient evidence in the

record to support the finding that the Claimant was guilty of the three rule violations with which he was charged.

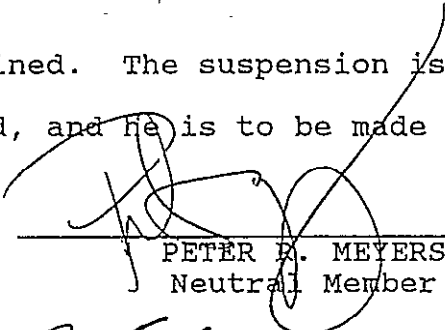
There is no question that the Claimant was working at his job when the injury occurred. Moreover, the evidence also shows that the rails were wet and that the rail fork slipped. However, there is insufficient evidence that had the Claimant, while working as a back hoe operator, better complied with the rules that the accident would not have occurred.

As this Board has stated in the past, in order to support a suspension issued because of negligent performance that led to a duty injury, the Carrier must bring forth sufficient evidence of wrongdoing or a rule violation. It is not enough to have the supervisor testify that he does not "think" that the injury or tripping or falling would have occurred if the rules had been followed. The facts presented here are certainly not sufficient enough to sustain discipline against a fourteen-year employee.

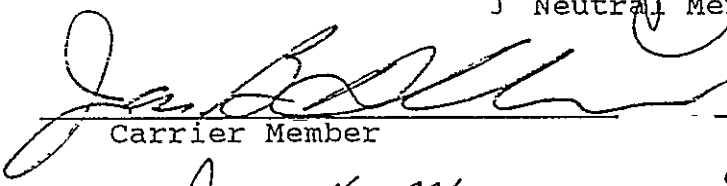
Since the Carrier has not met its burden of proof in this case, the claim must be sustained.

AWARD:

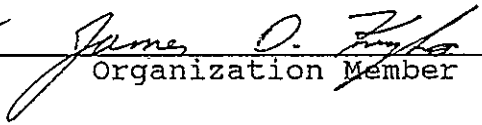
Claim sustained. The suspension is to be removed from the Claimant's record, and he is to be made whole for all lost wages.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: June 11, 1991