

Case No. 9

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

NAT. RAILROAD TION
Aug 13 1 15 PM '90
ADJUSTER

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

Seven day suspension assessed J. L. Maxwell, ID# 164429
as a result of investigation held May 11, 1990, at
Tampa, Florida."

FINDINGS:

As a result of personal injury sustained by Claimant on April 18, 1990, he was charged with the following:

Violation of Rule #1 which reads in part: 'Safety is of the first importance in the discharge of duty. Employees must exercise care to avoid injury to themselves or others. . .'

Violation of a portion of Rule #11 which reads: 'Employees must watch where they step at all times.'

A formal hearing was held on May 11, 1990, and as a result, Claimant was assessed discipline of seven calendar day suspension. The Organization thereafter filed a claim on Claimant's behalf, challenging his suspension.

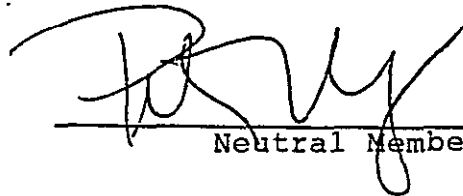
This Board has reviewed the evidence and testimony in this case and we must find that although there is clear evidence that the Claimant sustained a personal injury, there is not sufficient evidence in the record to support the finding that the Claimant was guilty of failing to exercise care to avoid the injury to himself. The mere fact that an injury occurs does not automatically enable the Carrier to issue discipline to a claimant. There must be proof in the record that the Claimant did not act properly and ignored safety rules and principles in the performance of his duties. That type of proof is

not here.

Given the fact that the Carrier bears the burden of proof in cases of this kind, this Board must find that the claim is sustained. The seven day suspension assessed the Claimant will be removed from his record and he shall be made whole.

Award:

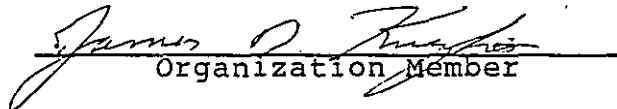
Claim sustained. The seven day suspension shall be removed from Claimant's record and he shall be made whole for any lost pay.



Neutral Member



Carrier Member



Organization Member

Date: July 30, 1990