

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY

Case No. 27

STATEMENT OF CLAIM:

Appeal of Claimant Thomas K. Kubera's suspension from Carrier's service.

FINDINGS:

On June 20, 1995, the Claimant was notified that a formal investigation was being scheduled to determine the Claimant's responsibility, if any, in a crossing accident that occurred on June 15, 1995, in Rockford, Illinois while the Claimant was operating a burro crane. On June 21, 1995, the Claimant was notified that he was being additionally charged with a violation of General Code of Operating Rule 1.5, Safety Instruction General Rule G and Company Policy resulting from a positive UHR test result. Claimant was subsequently placed on medical leave while undergoing rehabilitation.

A formal investigation was conducted on September 6, 1995, and it was determined that the Claimant was guilty as charged. Consequently, the Claimant was assessed a 20 working day deferred suspension, with a one-year probationary period.

The Claimant filed his appeal, challenging the Carrier's decision

The parties being unable to resolve the issue, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that the Carrier has failed to meet its burden of proof that the Claimant was in violation of any Carrier rules which led to the accident between the burro crane that he was operating and a motor vehicle. The testimonial record reveals that the Claimant and his co-worker were operating the crane within the regulations and in accordance with all of the safety rules. The Carrier has not shown that any of the rules or safety procedures were violated by the Claimant. There is no question that an accident occurred. However, the evidence reveals that the motor vehicle was being driven by a very young driver who did not have his license with him, who had music blaring out of his radio, and who attempted to leave the scene of the accident after it had occurred. It should also be noted that there was very little damage or no damage to the Carrier equipment and to the vehicle.

In order for the Carrier to impose discipline, it must show with a preponderance of the evidence that the Claimant was in violation of the rules or procedures which lead to the accident. In this case, the Carrier has failed to meet that burden.

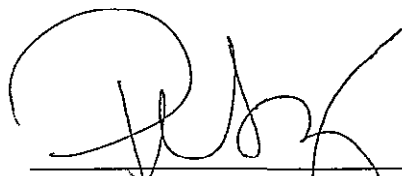
This Board has stated on numerous occasions that the simple fact that an accident occurs is not enough of a basis to impose discipline. In order to justify the imposition of discipline, the Carrier must come forward with sufficient evidence that the Claimant was in violation of the Rules or procedures and that those violations led to the accident. Consequently, with respect to the part of the claim dealing with the imposition of the 20-working day deferred suspension and the one year probationary period, this Board must

sustain the claim. There was insufficient evidence to prove that the Claimant was guilty of any wrongdoing.

Although it is very limited, the record seems to indicate that the Claimant was additionally charged with a violation of Rule G when he was tested after the accident and came up with a positive UHR result. He was subsequently placed on medical leave while undergoing rehabilitation. With respect to that element of the case, if it was part of the claim, this Board does not sustain the claim. The Claimant was involved in an accident and the Carrier had every right to request a test. If the Claimant came up positive, then the Carrier had a right, under its rules, to place him on medical leave while undergoing rehabilitation.

AWARD

Claim sustained in part. The 20-working day deferred suspension and the one-year probationary period shall be removed from the Claimant's record. Any action taken for the Rule G violation is a separate matter and the Carrier was within its rights in that regard.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

DATED: _____

DATED: _____