

SPECIAL BOARD OF ADJUSTMENT NO. 1122

BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYEES)	
)	
and)	AWARD NO. 61
)	CASE NO. 61
NORTHEAST ILLINOIS REGIONAL)	
COMMUTER RAILROAD - METRA)	

STATEMENT OF CLAIM:

Claim on behalf of J. Escutia, Trackman, for expungement of discipline assessed, payment for all time lost, and reimbursement for benefits lost during time withheld from service.

FINDINGS:

Special Board of Adjustment No. 1122, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act; as amended; that the Board has jurisdiction over the dispute herein.

By notice dated May 21, 2009, Claimant and two machine operators were directed to attend a formal investigation in connection with: "...your alleged failure to properly secure equipment prior to traveling to the siding at Round Lake on Friday, May 15, 2009 at 2:30 pm, when the equipment allegedly struck the grade crossing, causing injury to an employee standing up." The three employees were charged with violation of the following rules:

**On Track Safety (OTS) 23.2.2, paragraph 3.
Engineering Dept. Special Instructions #13 – General Operating
Considerations: Item #2 and Item #4.
Employee Conduct Rules: Rule L, 1st sentence.**

An investigative hearing was conducted on June 24, 2009. Following the hearing, the Carrier determined that the Claimant was guilty of the charges set forth in the notice of investigation. He was assessed a three-day deferred suspension. In accordance with the Agreement, the discipline issued to the Claimant has been appealed to this Board for expedited handling.

The record shows that the three employees were riding in spiker machine SDG 71302 traveling west towards Cedar Lake crossing at around 2:30 p.m. on May 15, 2009. The Claimant, who had completed his assignment of installing ties that day, was not operating the machine nor was he qualified to do so. When the

machine arrived at the crossing, the roller clamps were in the down position and struck the crossing, bringing the machine to an abrupt stop. Claimant was thrown forward and struck his head on an angle iron inside the cab of the spiker. He was taken for medical treatment and reported back to work the next day.

The Claimant and the other two occupants of the vehicle admitted that they were standing in the machine, notwithstanding the fact that there are three seats in the cab. They insisted that they had to stand in order to see over the equipment to view the crossing ahead. Claimant further testified that he was holding on to a handle while standing, but he acknowledged that, at the time of the incident, he let go of the handle to look for his lunch.

The record further shows that the Hearing Officer sustained an objection made by the Organization representative, who stated that the Claimant was not the operator of the equipment and therefore several of the charges did not pertain to him. The Hearing Officer agreed, and indicated that all charges other than the alleged Rule L violation would be withdrawn from the Claimant's notice of investigation.

The pertinent portion of Rule L states as follows:

Constant presence of mind to insure safety to themselves and others is the primary duty of all employees and they must exercise care to avoid injury to themselves or others.

After careful review, the Board finds that there is substantial evidence on the record to support the charge that the Claimant failed to adhere to the basic safety tenets set forth in the foregoing Carrier rule. While standing in a moving piece of equipment, he admittedly did not position himself to exercise care or avoid injury. At minimum, Claimant should have held on to the handle to brace himself against a sudden stop. He failed to do so.

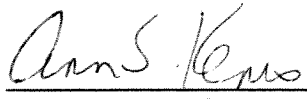
The remaining issue centers on the propriety of the discipline imposed. Generally, the Board will not set aside the Carrier's assessment of discipline in the absence of a finding that the discipline was arbitrary, capricious or unreasonable.

In this particular case, however, the Board is convinced that the discipline meted out was improper and unreasonable. The Hearing Officer indicated at hearing that Rule L would be the only charge directed against the Claimant, yet the notice of discipline states that he was found guilty of all the rules set forth in the original notice of investigation. Given this discrepancy, and considering the fact that the Claimant has had a discipline-free record since he was hired in April 2002, the Board finds that the appropriate level of discipline is a written warning for the Rule

L violation. The three-day deferred suspension shall be reduced to a written warning. Claimant's record shall be adjusted accordingly and benefits lost, if any, shall be fully restored.

AWARD

Claim sustained in accordance with the Findings.


ANN S. KENIS
Neutral Member

Dated this 9th day of September, 2009.