

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Case No. 215

AWARD 193

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The ten (10) day suspension assessed B&B Carpenter J. A. Pekelsma for alleged use of improper body mechanics on September 26, 1991 was without just and sufficient cause, unsupported and arbitrary (Organization File 9KB-4845D; Carrier File 81-92-43).
2. B&B Carpenter J. A. Pekelsma shall now be compensated for all wage loss suffered and have the discipline removed from his personal record.

FINDINGS:

Claimant Pekelsma, a B&B Carpenter headquartered in Evanston, Illinois, was observed by the Manager of Structures on September 26, 1991 spreading asphalt sealer on the commuter platform at Highland Park.

On September 27, 1991, the Claimant was charged with:

"....not protecting yourself against injury when you were observed utilizing improper mechanics at Highland Park, Illinois...."

Subsequently, a hearing was held to determine the Claimant's responsibility for any violations of the Safety Rules. The Manager of Structures testified that he observed the Claimant spreading the sealer with his left foot off the ground, lifting a 5-gallon bucket of

sealer incorrectly, and pouring the sealer from a "squatting position while hunched over the bucket". These actions, the Carrier determined, were in violation of Safety Rule 910A, which states in part:

"(b) - Have secure footing and examine walking surface for slip/trip hazards (c) bend the knees and keep your back straight (d) take a firm grip on the object and slowly straighten the legs."

Based on the evidence determined at the hearing and the Claimant's previous disciplinary history, he was assessed a ten-day suspension. The Organization took exception to the discipline and filed the instant claim on behalf of the Claimant.

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

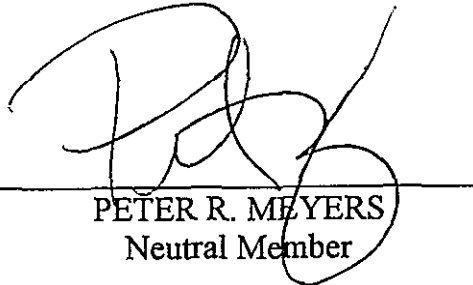
This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of performing his duties in an unsafe manner. Rule 910(A) is specific as to how the work is to be performed. The testimony is clear that the manager observed the Claimant spreading the sealer by leaning forward as far as possible with his right foot on the ground and his left foot in the air.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next must turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

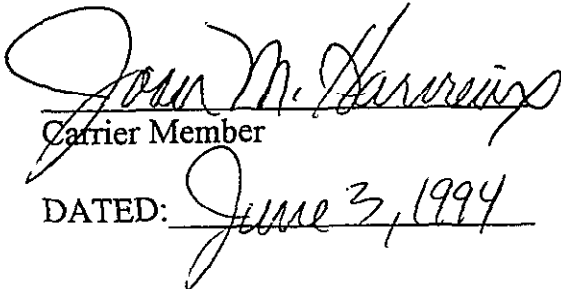
Given the nature of the wrongdoing in this case and the previous disciplinary record of the Claimant which includes an earlier five-day suspension, this Board cannot find that the Carrier violated any of the Claimant's rights when it issued him a ten-day suspension for violating the Safety Rules in this case. The record reveals that the Claimant sustained a lower back injury while on-duty less than one month before this incident. The Carrier has a right to enforce its Safety Rules to prevent injuries and to encourage its employees to abide by them.

AWARD

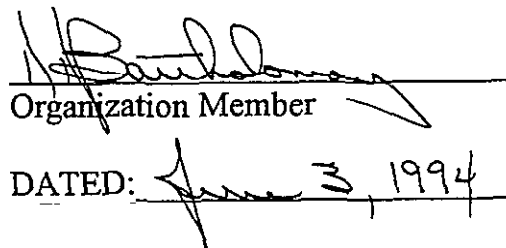
Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member
DATED: June 3, 1994



Organization Member
DATED: June 3, 1994