

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT**

BURLINGTON/NORTHERN/SANTA FE

AND

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES**

**Claimant:
Derrick E. Longworth**

**CASE NO. 53
AWARD NO. 54**

On February 2, 2001 the Brotherhood of Maintenance of Way Employees ("Organization") and the Burlington Northern/Santa Fe ("Carrier") entered into an Agreement establishing a Special Board of Adjustment in accordance with the provisions of the Railway Labor Act. The Agreement was docketed by the National Mediation Board as Special Board of Adjustment No. 1112 ("Board").

This Agreement contains certain relatively unique provisions concerning the processing of claims and grievances under Section 3 of the Railroad Labor Act. The Board's jurisdiction was limited to disciplinary disputes involving employees dismissed, suspended, or censured by the Carrier. Moreover, although the Board consists of three members, a Carrier Member, an Organization Member, and a Neutral Referee, awards of the Board only contain the signature of the Referee and they are final and binding in accordance with the provisions of Section 3 of the Railroad Labor Act.

Employees in the Maintenance of Way craft or class who have been dismissed or suspended from the Carrier's service or have been censured may choose to appeal their claims to this Board. The employee has a sixty (60) day period from the effective date of the discipline to elect to handle his/her appeal through the usual channels (Schedule Rule 40) or to submit the appeal directly to this Board in anticipation of receiving an expedited decision. An employee who is dismissed, suspended, or censured may elect either option. However, upon such election that employee waives any rights to the other appeal procedure.

This Agreement further establishes that within thirty (30) days after a disciplined employee notifies the Carrier Member of the Board, in writing, of one's desire for expedited handling of this appeal, the Carrier Member shall arrange to transmit one copy of the notice of the investigation, the transcript of the investigation, the notice of discipline and the disciplined employee's service record to the Referee.

These documents constitute the record of the proceedings and are to be reviewed by the Referee.

The Agreement further provides that the Referee, in deciding whether the discipline assessed should be upheld, modified, or set aside, will determine whether there was compliance with Schedule Rule 40; whether substantial evidence was adduced at the investigation to substantiate the charges made; and, whether the discipline assessed was arbitrary and/or excessive, if it is determined that the Carrier has met its burden of proof.

In the instant case, this Board has carefully reviewed each of the above-captioned documents prior to reaching findings of fact and conclusions.

BACKGROUND FACTS

Claimant, Derrick E. Longworth, a Machine Operator, was charged with failure to be alert and attentive, as well as, his inability to recognize the potential slipping hazard when he allegedly fell off the Tie Insertor BNX 63-00164 at approximately 1715 on July 8, 2002. This accident occurred while working near MP 201.4, where he sustained injury to his middle finger on his left hand.

An investigation was held at the Burlington Northern Santa Fe Section House, 301 Viaduct Road, Savanna, Illinois on Monday, July 22, 2002. At that time, he was charged with the violation of Maintenance of Way Safety Rules S-1.5.2 and S-1.2.3, Alert and Attentive.

The Rules, at issue, are as follows:

Maintenance of Way Safety Rules – January 31, 1999

S-1.2.3, Alert and Attentive

Assure you are alert and attentive when performing duties.

S-1.4.6, Three Point Contact

Maintain three point contact when getting on and off vehicles, equipment, or machinery and ascending or descending ladders or platforms. Three point contacts consist of both feet and one hand or both hands and one foot.

S-1.5.2

Inspect your work locations and vehicles for any conditions that might cause injury, property damage, or interfere with service. If you find such a condition, take a necessary action to protect against the hazard and discontinue activities in the area or vehicle. Promptly tag, where appropriate, and report any defects and hazards to your supervisor.

It is the Carrier's position that the Claimant knowingly encountered an apparently hazardous situation when he fell off the Tie Inserter. The Carrier points out that other machine operators never fell off while checking coolants in the radiator, as the Claimant was purporting doing when he fell off and injured himself. The Carrier notes that Rule S-1.5.2 is clear, that one must "inspect" a vehicle which "might" cause injury and "to protect" against hazardous conditions. Moreover, the Carrier contends that Rule S-1.4.6, Three Point Contact, was also violated. Based on all the above, the Carrier requests that the Board deny this Claimant's appeal and sanction the Claimant with a reprimand.

The Organization counters that the Claimant was not informed of the possible hazard of an oil leak. The Organization asserts that the Claimant performed his duties as a machine operator, as he normally does. It points out that the Claimant's Supervisor characterizes him as being a very good employee, "the best operator that he has ever had" and has been with the Carrier for ten (10) years. The Organization further explains that the Machine Operator's job, itself, is hazardous by nature, as it requires one to get on and off the machine to test fluid levels. Thus, the Organization contends that an accident was inevitable--even in the absence of one's failure to be alert and attentive. Based on all the above, the Organization requests that the Board sustains the Claimant's appeal and that he should not be reprimanded.

FINDINGS AND OPINION

After a careful review of the record, the Board finds that the Claimant's appeal must be denied for the following reasons.

First, the Claimant admits that the Tie Inserter was often slippery. Thus, he admits that he had prior knowledge that the conditions could potentially be hazardous. Rule S-1.5.2 requires that he must inspect the machine and carefully proceed to monitor the levels of fluid. Had the Claimant inspected carefully, he could have discovered the presence of a dangerous situation. The Board finds that his omission to discover and discern the presence of such a danger was negligent.

Second, the Claimant also admits that he contributed to this hazardous situation by his oily boots that occurred upon his repeated mounting and dismounting of the machine. Moreover, he agrees that his oily boots were the direct cause of his slippage and resulting injury.

Third, in response to the Organization's argument that the Claimant is an excellent employee, the Board finds that the strict wording of the applicable regulations is very clear. There is a duty to inspect the machine and to protect oneself against possible safety hazards stated in Rule S-1.5.2. Had the Tie Inserter been properly cleansed of oil, he could have prevented the resultant injuries which he later incurred.

Fourth, Rule S-1.4.6, Three Point Contact, was also breached because the Claimant admits that the slippery conditions prevented sufficient contact to fully comply with this regulation. Based upon all of the above, the Board finds that this appeal must be denied.

AWARD

The Claim is Denied. Claimant, Derrick E. Longworth, was rightfully reprimanded for the aforementioned violations.

2-21-03
Date

A. Y. McKissick
A. Y. McKissick
Referee