

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

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

AWARD No. 201

Case No. 223

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The five (5) day suspension assessed Foreman B. D. Kelley for his alleged responsibility in not properly using a ballast bar and not reporting an injury when it happened was without just and sufficient cause, capricious and excessive (Organization File 4PG-3490D; Carrier File 81-92-126).
2. Foreman B. D. Kelley shall now be allowed the remedy provided in Rule 19 (d).

FINDINGS:

On July 7, 1992, the Claimant, B. D. Kelley, a section foreman, was unloading ballast from a ballast car. The Claimant tried to open one of the ballast doors but discovered it was not operating properly, so he "straddled" the ballast bar to get better leverage. In so doing, his foot got caught causing him to lose his balance and fall off the 10-foot bridge embankment. The Claimant did not feel he was injured in any way so he did not report the fall to his supervisor.

The next morning the Claimant felt pain in his left knee and could not get out of bed. He, subsequently, reported the injury by filling out Form 148.

The Claimant was charged with "not having a ballast bar properly placed" and "not reporting an injury at the time it happened". A formal hearing was held and it was

determined that the Claimant was guilty as charged and he was suspended for five days. The Organization appealed the discipline but the appeal was denied.

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 to support the finding that the Claimant violated Rule 909 when he failed to properly open the door on the ballast car. The Claimant is supposed to not straddle a bar or lever while in use. Claimant admits that he straddled the bar to get better leverage and he lost his balance and fell off.

This Board also finds that there is not sufficient evidence in the record to support the finding that the Claimant violated the rules relating to the prompt reporting of an injury. The record reveals that once the Claimant became aware that he was injured, he promptly reported that injury to the Carrier. This Board understands the seriousness of the rules requiring the prompt reporting of an injury, but in this case the Carrier hasn't proven that the Claimant was immediately aware of an injury and then did not report it. In fact, the evidence reveals that the Claimant reported the injury as soon as he became aware of it.

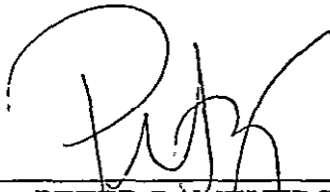
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

In the case at hand, the Claimant was issued a five-day suspension. Since this Board has found that the more serious violation, that of not promptly reporting an injury, was not proven by the Carrier, this Board must find that the five-day suspension was unreasonable and therefore, must be set aside. There was a finding that the Claimant was improperly straddling the ballast bar, and therefore, this Board finds that that type of a violation justifies a written reprimand. The Claimant must be instructed in that reprimand that he should not straddle a bar in the future because it violates the rules it could cause injury.

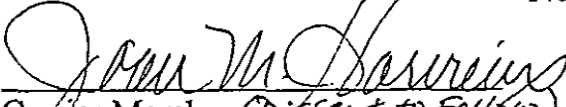
Consequently, this Board finds that the five-day suspension shall be removed from the Claimant's record and he shall be made whole. A reprimand for the safety rule violation shall be placed in the Claimant's disciplinary record.

AWARD

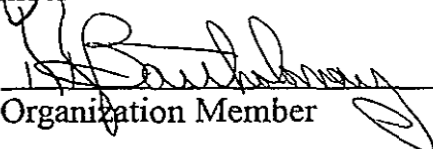
Claim sustained in part. The five-day suspension of the Claimant is hereby ordered to be removed from his record. He shall be made whole for any lost pay resulting from the suspension. A written reprimand shall be placed in the Claimant's file for the safety violation only.



PETER R. MEYERS
Neutral Member



Carrier Member (*Dissent to Follow*)



Organization Member

DATED: NOV 7 1974

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