

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) - NORTHEAST CORRIDOR**

Case No. 232

STATEMENT OF CLAIM:

Appeal of the discipline imposed upon Claimant T. Goodrich (System File BMWE-499D).

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as a Machine Operator, headquartered at Union Station in Chicago, Illinois.

By letter dated January 6, 2004, the Claimant was notified to appear for a formal investigation and hearing to develop the facts and determine the Claimant's responsibility, if any, in connection with an incident in which the Claimant allegedly injured his left knee while on duty and allegedly provided false and misleading information regarding his alleged injury, in violation of the Carrier's Standards of Excellence on Safety and on Trust and Honesty, as well as the Carrier's Maintenance of Way Safety Rules and Instructions. After a postponement, the investigation was conducted on January 22, 2004. By letter dated January 30, 2004, the Claimant was notified that as a result of the investigation, he had been found guilty of the charges, and that he was being dismissed from service in all capacities.

The Organization filed a claim on the Claimant's behalf, challenging the Carrier's

decision to discharge the Claimant. The Carrier thereafter modified the assessed discipline by agreeing to reduce the Claimant's dismissal to a suspension, with all time held out of service to apply. The Claimant was returned to service with full seniority rights, but without backpay. In addition, the Carrier required the Claimant to submit to and satisfactorily pass a return-to-duty physical examination, and to acknowledge that further violation of Carrier rules may result in dismissal. The Organization then appealed this matter to this Board.

The Carrier initially contends that based on the evidence in the record, it is clear that the Claimant is guilty of violating the cited Standards of Excellence and Safety Rules. The Carrier asserts that although Project Engineer Coburn admittedly typed Welder Lomeli's statement, Lomeli indicated that the statement was in Lomeli's own words. Moreover, although Lomeli now denies stating that the Claimant had irritated an existing injury, Lomeli signed the written statement without requesting any changes to it. In addition, although Lomeli testified that he did not have knowledge of the existing injury to the Claimant's knee, several portions of Lomeli's written statement demonstrate that Lomeli was aware that the Claimant had an existing injury. The Carrier maintains that the record clearly proves that Lomeli was aware of the Claimant's existing injury, and his subsequent denial of such knowledge cannot be deemed credible.

The Carrier goes on to assert that the Organization's allegations relating to the weight and awkwardness in carrying the weld shear does not relieve the Claimant of his responsibility to handle the material in a safe manner. If the weld shear was heavy and unwieldy when connected to the hoses, the Claimant had an increased duty to take the

necessary precautions to handle the weld shear safely and without incident. The Carrier further points out that the Claimant's experience as a safety trainer justifies his being held to a higher standard of care in knowing and abiding by all applicable safety rules. The Carrier insists that the Claimant should have been more aware of his work area to ensure that he had a secure footing before lifting and moving the weld shear.

The Carrier maintains that the preponderance of the evidence supports the finding that the Claimant neglected to use the proper care mandated by the Safety Rules and the Standards of Excellence. Had the Claimant complied with these Rules and Standards, he would have averted the mishap. The Carrier argues that the original discipline of dismissal cannot be viewed as an abuse of discretion, especially in light of the Claimant's previous discipline record, which includes prior violations relating to the Claimant's failure to properly attend to his duties.

The Carrier asserts, however, that in consideration of the particular facts and circumstances of this case, it has agreed to grant the Claimant an opportunity to prove that he can be a valuable and productive employee. Accordingly, the Carrier modified the initially assessed disciplinary penalty of dismissal, reducing that penalty to a disciplinary suspension. The Carrier argues that the amended discipline is the most effective means of accomplishing the legitimate objective of impressing upon the Claimant the critical importance of extinguishing any tendency to perform his duties without taking all of the proper precautions. The Carrier points out that such an inclination may continue to compromise the Claimant's safety, as well as the safety of others. The Carrier insists that the Claimant must be aware that remaining alert and

attentive to his duties is vital to the Carrier's operations and to the safety of employees, passengers, and others who work on the Carrier's property. Moreover, the Claimant must recognize that obeying Carrier rules is essential to job safety and his continued employment. The Carrier emphasizes that any future similar offense will subject the Claimant to dismissal from service.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that Project Engineer Coburn told Welder Lomeli what to include in his statement. Coburn prepared Lomeli's statement. The Organization maintains that Lomeli's statement incorrectly asserts that the rail timber did not provide much support; the Organization points out that the rail timber was encased in concrete. The Organization further points out that Lomeli now denies stating that the Claimant had irritated an existing injury, contradicting his own written statement.

The Organization argues that the weight and awkwardness associated with carrying the weld shear played a role in the Claimant's injury. When connected to the hoses, the weld shear was quite heavy and unwieldy. The Organization points out that the Claimant was an experienced safety trainer.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that

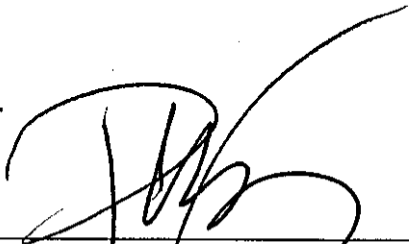
there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to follow the Carrier's safety standards when he failed to secure a foothold before attempting to lift the rail shear, thereby putting uneven stress on his knee. The record is clear that the Claimant had an assignment that was within his ability. There is no question that the weld shear is a very heavy piece of equipment and, therefore, the Claimant had to make sure that he was handling it properly before he began to move it. It is clear from this record that the Claimant did not set himself up properly before taking that action. That behavior on the part of the Claimant violated the Carrier's safety rules.

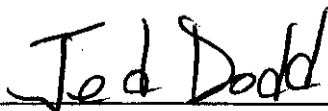
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

The Claimant in this case was originally terminated and that termination was reduced to a suspension of approximately six weeks. Given the previous disciplinary background of the Claimant, which includes several counselings, suspensions, and a disqualification, this Board cannot find that the Carrier's imposition of the suspension discipline in this case was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER
DATED: 8/26/05

CARRIER MEMBER
DATED: 8/27/05