

Special Board of Adjustment No. 986

Parties to the Dispute

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION – IBT RAIL CONFERENCE**

V.

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

Claimant: Wilbert McKinzie

Award No. 274

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of a reprimand assessed on Engineer Work Equipment Operator Wilbert McKinzie (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated July 2, 2008. The Organization claims the Claimant was unjustly disciplined. It further argues in the event the Board finds a basis to uphold the Carrier's finding of guilt, the penalty should be modified because it is unduly harsh and capricious. As a remedy, the Union requests its claim to be granted and that the discipline of a reprimand to be expunged from Claimant's record.

Background of the Case

The Claimant, Wilbert McKinzie, was an employee with approximately nine years of service at the time of the incident. On June 12, 2008, the Claimant, while climbing on a Geismar Crane in the vicinity of Princeton Junction, New Jersey, slipped off a tire, sustaining injuries to his neck and right shoulder. He failed to immediately report his injury to his immediate supervisor. As a result of these actions he was served with a Notice of Investigation dated July 2, 2008. He was charged with failing to exercise proper care and caution while performing his duties and with failing to immediately report his injury to his immediate supervisor in violation of Amtrak's Standards of Excellence as to "Attending to Duties" and "Safety"; and NORAC Operating Rules B, D, N, R, and S; and M/W Safety Rules 4313 and 4314. After two postponements, on August 12, 2008 an investigation was held with the Claimant and his representative present. By letter dated August 26, 2008 Claimant was found guilty of the charges and assessed the discipline of a fifteen calendar days' suspension, five days to be served and ten days to be held in abeyance. On appeal to the Deputy Chief Engineer-Maintenance the Carrier was agreeable to modifying the discipline assessed to a Letter of Reprimand in complete and final settlement. The Claimant did not wish to settle and the matter was appealed to the highest authority on the property designated to hear the appeal. While the Claimant's guilt was upheld, that appeal resulted in the discipline being modified to a Letter of Reprimand. The Claimant wished to continue the appeal and the parties agreed to bring the case to this Board for final adjudication.

Opinion of the Board

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the BMW and Carrier.

After hearing upon the whole record and all the evidence, as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing hereon. The Claimant, Wilbert McKinzie, was ably represented at the hearing before this Board by the Organization.

The Carrier argued its actions in this case were justified and supported by substantial evidence. The Carrier contended the record established the Claimant on the date in question failed to exercise proper care by utilizing the existing steps to mount and dismount the Geismar Crane. As a result of disregarding the proper procedure the Claimant slipped off the tire he was using to mount and dismount and injured his neck and shoulder. In his own testimony the Claimant acknowledged that he used the tire rather than the existing steps to get on and off the crane. The record further established, according to the Carrier, that the Claimant failed to immediately report the injury to his immediate supervisor but rather waited 2 days to report the injury to his foreman. Reporting an injury to a foreman, who is not a management employee, failed to satisfy the requirements of Rule 4000. In point of fact the Carrier was not made aware of the injury until six days after the alleged injury occurred. His actions, Carrier argued,

violated the Carrier's Standards of Excellence, NORAC Rules and the Amtrak's Safety Rules and Instructions for Maintenance of Way Employees.

Carrier further argued that the original penalty of fifteen days, five to be served and ten to be held in abeyance, was not excessive. However because of the Claimant's pristine disciplinary record together with the facts and circumstances as presented at the prior appeal step the Carrier modified the discipline to a Letter of Reprimand. In so doing the Carrier exercised in its sole discretion leniency toward the Claimant. Carrier urged the Board to uphold the discipline in order to impress upon the Claimant of the need and importance of adhering to safety rules.

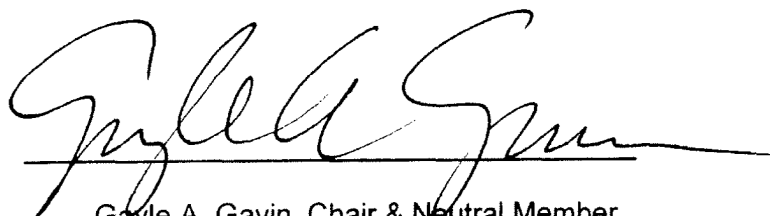
The Organization argued the Claimant had been trained to mount and dismount the Geismar Crane by utilizing the tire. It contended that the Carrier's own safety report indicated the existing methods was awkward and was in the process of modifying the equipment since the accident. Additionally the Claimant did not violate Carrier rules regarding the need to immediately report any injuries. In actuality he reported his injury to his immediate supervisor, his foreman, as soon as he realized he was injured. His actions complied with the Carrier's reporting requirements. Based on the record, the Organization argued, the Carrier failed to prove the charges. It urged the Board to grant its claim and expunge the charges from the Claimant's disciplinary record.

Upon a review of the entire record, the Board finds the Carrier met its burden in proving the charges issued against the Claimant on July 2, 2008. The Claimant on such occasion failed to follow the appropriate safety protocols, resulting in his injury. Compounding and exacerbating the matter, he then failed to immediately report his injury to his supervisor, but rather 2 days later reported it to his foreman. His actions

clearly did not comply with the Carrier's reporting requirements. Safety rules and procedures are in place for a reason and with a purpose. Employees who fail to strictly adhere jeopardize not only their own safety but could also jeopardize that of their fellow workers or even the riding public. There is simply no place on a railroad for such digressions. The Carrier exercised its discretion at a lower appeal level and modified the discipline from a fifteen day suspension to a Letter of Reprimand. In doing so, the Carrier in no way diminished the significance of the violations but considered the facts and surrounding circumstances together with the Claimant's excellent disciplinary record. This Board agrees with the discipline imposed and finds no reason to mitigate it any further.

AWARD

The claim is denied.

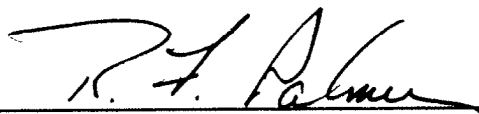


Gayle A. Gavin, Chair & Neutral Member



Jed Dodd, Organization Member

Dated: 4/21/09



Rick Palmer, Carrier Member

Dated: 4/21/09