

PLB 6558
CASE NO. 55
AWARD NO. 55

PARTIES TO DISPUTE:

SOO LINE RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

STATEMENT OF CLAIM:

"Claim on behalf of Conductor J. E. Wagner for removal of ten (10) days actual suspension and pay for all time lost and loss of other benefits associated with discipline assessed following formal investigation conducted on May 20, 2004, for violation of Field Operations Safety Rules and Work Procedures 1.0 – Preventing Slips, Trips, Falls when walking on ballast."

FINDINGS:

On Wednesday, April 21, 2004, at approximately 1930 hours, Engineer J. Wagner was working at Carrier's Bensenville F-Yard between tracks F7 and F8 – West End. While inspecting train consist, he stepped onto soft ballast which concealed a hole. The soft ballast gave way, Engineer Wagner fell and sustained an injury to the back of his leg.

On April 27, 2004, Carrier mailed Engineer Wagner a certified letter, advising:

"This will serve as your notification to attend a formal investigation/hearing to be held in conference room #224 of the Canadian Pacific Yard Office, 11306 Franklin Avenue, Franklin Park, Illinois at 13:00 hours on Tuesday, May 4, 2004, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with:

Your alleged improper work procedure while walking between F7 and F8 resulting in alleged injury to yourself.

This incident allegedly took place at the Bensenville F-Yard, between F7 and F8 – West End.

The time of this alleged incident was approximately 19:30 hours on Wednesday, April 21, 2004, while employed on assignment GY-212'."

After agreed upon postponements, Carrier held formal investigation on May 20, 2004. Carrier read transcript of formal investigation and assessed discipline at ten (10) actual days suspension. Discipline was appealed and denied in accordance with labor agreement. Parties have been unable to resolve this dispute on property, and it comes, now, before this Board for final and binding adjudication.

During formal investigation, Carrier argued that Engineer Wagner willfully ignored rules directing him to be aware of slippery ballast, and ballast that may shift or move. According to Carrier, the consequence of Engineer Wagner's disrespect for safety rules was a personal injury to his leg.

Organization insisted that accident occurred during the normal course of Engineer Wagner's performance of duty; and he had no way of knowing ballast that appeared safe concealed a hole, and the hole would give way.

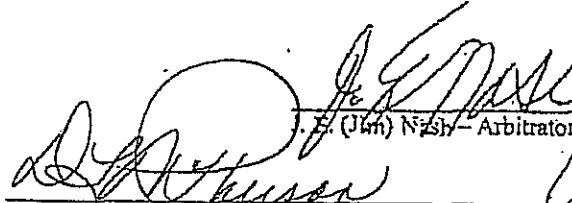
OPINION OF THE BOARD:

The Board has read briefs submitted by both parties and listened to their oral arguments. We saw very little probative evidence to support Carrier's allegation of a rule violation. The mere fact that an employee sustains an injury is insufficient evidence to support a charge of unsafe work habits and the assessment of discipline. We believe it is tragic enough that Engineer Wagner sustained an injury during the normal course of performing his job; he ought not have the added burden of having to worry about discipline.

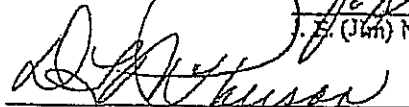
We believe Carrier behaved unreasonably in assessing discipline; discipline must fall.

AWARD

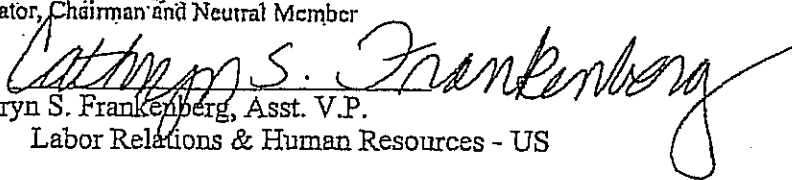
Claim is sustained for reasons outlined, above. Carrier is directed to implement this award within thirty (30) days of its execution by majority members of this Board.



J. E. Nash - Arbitrator, Chairman and Neutral Member



Employee Member, D. L. McPherson
International V.P. B.L.E.



Cathryn S. Frankenberg, Asst. V.P.
Labor Relations & Human Resources - US

Dated 4/11/07