

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6798

PARTIES UNITED TRANSPORTATION UNION

TO and

DISPUTE THE BURLINGTON NORTHERN and SANTA FE RAILWAY CO.
COAST LINES

AWARD NO. 2

CASE NO. 2

Organization File No. M-24-984

Carrier File No. 61-03-0015-D

STATEMENT OF CLAIM:

Request the removal of the Level S Thirty (30) Day Record Suspension and one year probation from switchman P. D. Creed's record.

STATEMENT OF FACTS:

On November 18, 2002, P. D. Creed ("Claimant"), having a seniority date of January 20, 1997, was assigned as Helper on the Y-WAT 1021-18A. At approximately 1:30 P.M., Claimant sustained an injury to his left side when he lost his footing and fell

while attempting to cross the front of engine BNSF 2862 on a narrow walkway. There were no witnesses to his efforts to transverse the engine or to his fall from said engine.

Claimant duly and timely reported the injury as required by the governing rules.

In support of his position and immediately after the incident under review herein, Claimant prepared and submitted a Statement setting forth the circumstances under which the injury occurred, as follows:

On 11/18/02 I worked job YLACO741-14 on duty at 0630. At about 1330 we parked our train on the main line across from Exxon-Moble. I boarded our lead engine on the engineers side and proceeded across the front of the engine towards the cabin door. At the turn toward the door I slipped and fell off the engine hitting my left side on the way down.

The Carrier secured two statements by fellow employees who were members of the same crew as Claimant. Conductor W. F. Tilbury submitted a Statement setting forth what he had observed at the site, namely:

D. P. Creeds injury was on opposit[e] side of 1018 between two tank cars saw him climb the power using 3 point contact on engineers side then lost sight of him. Heard him yell about a minute later saw him walk around the front of the power holding his side.

W. L. Miller, Trainman on the same crew, also submitted a Statement setting forth what he had observed at the site, namely:

I was inside the cab getting my grip ready and I heard Dave yell out. I walked to the door and looked out to see what happened. Dave was standing on the ground groaning and holding his side. He told me he slipped and fell off the engine.

The Carrier commenced an investigation which included a reenactment of the incident. At the conclusion of the initial investigation, it was determined that the walkway met Federal Railway Administration ("FRA") standards, was not defective and a formal investigation was undertaken.

Based upon the formal investigation, the Carrier concluded "that but for the Claimant's carelessness and failure to be alert and attentive, the injury would not have occurred." The Carrier charged Claimant with violating the General Code of Operating Rules ("GCOR"). As revised, Rules 1.1.2, effective April 2, 2000, provides:

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

In addition, the Carrier charged Claimant with violating the Train, Yard and Engine ("T. Y. & E") Safety Supplement No. 1. As revised, effective October 10, 1999, Rule S-1.2.3 and Rule S-1.5.3 provide:

Rule S-1.2.3: Alert and Attentive

Assure that you are alert and attentive when performing duties.

Rule S-1.5.3: Footing

Be alert to all walkway conditions, and adjust your actions to accommodate weather, time of day, and grade. Guard against slipping and stumbling hazards by using handholds and railings when available.

As a result of the foregoing violations by Claimant, he was assessed a Level S Thirty (30) Day Record Suspension which suspension was accompanied by a one year probationary period.

FINDINGS:

Based upon the record, the Board finds that the parties herein are the Carrier and the Employee Representative within the meaning of the Railway Labor Act, as amended. The Board is duly constituted by agreement of the parties and has jurisdiction over this dispute.

The Board finds that on November 18, 2002 at approximately 1:30 P. M., while transversing the front of the engine, Claimant failed to exercise the required care and sustained an injury to his left side when he lost his footing and fell attempting to cross the front of engine BNSF 2862 on a narrow walkway. Claimant admitted that he was "very

familiar with the engine” having made “thousands” of such crossings and was knowledgeable of the contours of the walkway.

There were no witnesses to confirm or to rebut what had occurred when Claimant was transversing the engine or when he fell and was injured.

Claimant made a timely report of the injury at issue herein as required. In support of his positions, immediately after the incident under review herein, Claimant prepared and submitted a Statement setting forth the circumstances under which the injury occurred.

In response, the Board relies upon the report and testimony of Engine Inspector, Jesse Wood (“Wood”) and finds that no “defects or instrumentality” were found that contributed to the fall and that the engine walkway and safety devices on the locomotive were free of defects or hazards that could have attributed to the fall.

Furthermore and in accordance with Wood’s Report of Inspection, the Board finds that “the ladders, running boards and platforms were all good and secure, [with] no defects, no oil on catwalks or walkways and had hand rails and grab irons all in good condition.” Wood concluded in his report no repairs were “needed or made to the equipment.”

The Board concludes that the injury occurred as a result of Claimant’s failure to maintain the required contact as governed by the Rules. Had Claimant maintained a hand

grip at the time his feet slipped, which action was mandated by the Rules, this incident would have been avoided.

Therefore, the Board finds that Claimant violated the Rules and further finds that the arguments submitted on his behalf by the Organization, do not warrant a removal of the discipline.

In conclusion and based upon the foregoing, the Board finds that Claimant suffered an injury (a) because of his failure to remain alert and attentive to his surroundings in violation of GCOR Rule 1.1.2; (b) because of his failure to maintain a 3-point contact getting on or off equipment in violation of Rule S-1.4.6; and (c) because of his failure to be alert to all walkway conditions and guard against slipping and stumbling hazards by using hand holds and railings in violation of Rule S-1.5.3.

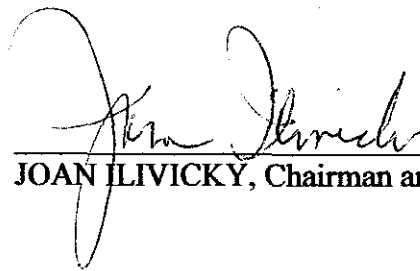
The argument submitted by the Organization that Claimant was denied an opportunity to present a witness on his behalf and therefore he did not receive a "fair hearing" is without merit based upon the Organization's failure to submit an offer of proof setting forth evidentiary material sustaining Claimant's position as held in PLB No. 4663, Award No. 25 (Arbitrator, Wallin) and reaffirmed by this Board in Award No. 1.

Similarly, the Organization's submission that the reenactment of the incident was unfair because Claimant could not participate in the reenactment of the incident inasmuch

as he could not retrieve his steel-toed shoes from his locker, is also without merit. His request for an adjournment was appropriately denied since he knew or should have known that proper equipment was required in order to accurately reenact what had occurred.

AWARD:

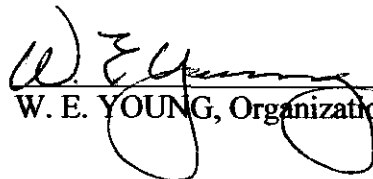
Based upon the foregoing, the Grievance is denied.



JOAN ILIVICKY, Chairman and Neutral Member



GENE L. SHIRE, Carrier Member



W. E. YOUNG, Organization Member

Dated: 