

PUBLIC LAW BOARD NO. 912

PARTIES) NORFOLK AND WESTERN RAILWAY COMPANY
TO)
DISPUTE) UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Claim of Detroit Brakeman M. A. Siebel for removal of ten (10) days deferred suspension from his record and pay for all time lost, in connection with the investigation held on October 28, 1982, account the personal injury received on July 2, 1982.

FINDINGS: This Public Law Board No. 912 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute, the claimant brakeman was on duty and assigned to Train F-52-D on July 2, 1982. At approximately 4:35 a.m., the claimant injured his ankle.

As a result of that injury, a formal investigation was held on October 28, 1982. Pursuant to the investigation, the claimant was assessed ten days deferred suspension.

The Board has examined the evidence and transcript of record. There is no indication that the claimant has suffered a previous injury, and he has been an employee for ten years. Under the circumstances, there is no justification for making a finding from the evidence that the claimant violated the rules of the Carrier.


If the claimant had had injuries of this nature previously, we could accept the doctrine of "res ipso loquitur" (the thing speaks for itself). In other words, we could accept the conclusion that the claimant had to have been negligent in order to have been injured.

However, in view of the circumstances in this case, it is the opinion of the Board that there is insufficient evidence, and the claim will be sustained.

AWARD: Claim sustained.

ORDER: The Carrier is directed to comply with this award within

thirty days from the date of this award.


Preston J. Moore, Chairman


H. D. Masters, Union Member


W. E. Goggin, Carrier Member

St. Louis, Missouri
June 13, 1984

Discipline removed with pay for all time lost.