

The Second Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(CSX Transportation, Inc.
(Baltimore & Ohio Railroad Company)

STATEMENT OF CLAIM:

1. That the former, Baltimore & Ohio Railroad Company, now CSX Transportation (Carrier), in violation of Agreement Rule 32 arbitrarily and capriciously assessed Electrician T. B. Higson five (5) days actual suspension as a result of hearing on June 19, 1990; and,

2. That the Baltimore and Ohio Railroad Company compensate Claimant T. B. Higson for all time lost as a result of the unjust suspension; and

3. That Electrician Higson's record be expunged of all mention of Carrier's improper and unjust discipline.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, an Electrician at Carrier's Cumberland Locomotive Shops, was charged with responsibility for a personal injury he incurred on May 19, 1990, while attempting to remove a high voltage electrical cabinet cover from Locomotive 8341. Subsequent to a Hearing held on June 19, 1990, Claimant was found guilty of the charge and assessed the penalty of a 5-day suspension.

The evidence developed at the Hearing shows that the cover was secured by 5 bolts and was made of sheet metal weighing approximately fifteen pounds. The Carrier did not contest testimony that the cover should have properly been equipped with a handle and clips to facilitate its safe removal.

Claimant removed 3 of the 5 bolts and then loosened the lower left bolt for use as a "hinge" to allow the cover to swivel. While loosening the fifth bolt, the cover suddenly dropped to the floor, injuring the Claimant's left foot. Claimant, who has a long record of service with the Carrier, essentially testified that he followed his ordinary and customary procedure in attempting to remove this cover.

A Carrier Officer testified that he examined the cover and found that the lower left bolt was stripped. In its denial letter of October 22, 1990, the Carrier states:

"The cover was not equipped with a handle or clips, which would have allowed the Claimant to remove it safely. He therefore made a makeshift hinge out of one corner bolt, which had to bear the weight of fifteen to twenty pounds. In this case, the bolt was apparently stripped of its threads and did not perform as intended."

It is well established that the Carrier has the burden of proving by "substantial evidence" that Claimant is guilty of the charge. The Supreme Court has defined the term as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consolidated Edison Co. v. NLRB, 305 U. S. 197, 229).

While not unmindful of the Carrier's desire to maintain a strong safety program, it has the burden of proving that an employee is at fault if it chooses to invoke disciplinary proceedings after an injury occurs. Here the record is clear that the cover not only lacked required safety features, but was secured by a defective bolt. There is no evidence that Claimant, an experienced employee, acted in an unsafe manner in attempting to remove this cover; it appears more likely that the major factor in this accident was the defective equipment.

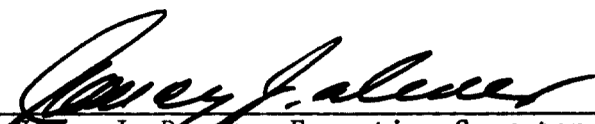
The Board thus concludes that the Carrier has failed to support its finding of guilt by substantive evidence and that such finding was therefore arbitrary. Accordingly, we will sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1992.