

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12749
Docket No. 12603
94-2-92-2-123

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen/ Division of TCU
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That, the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) violated Rules 37 and 47 of the Shops Craft Agreement between Transportation Communications International Union - Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) on September 17, 1990, when it assessed a letter of reprimand against Carman Eric J. Allen (hereinafter "claimant") on account of alleged violation of Safety Rule 525 of CSX Safety Handbook and failed to provide adequate lighting for the claimant while working.
2. That the Carrier violated the service rights of the claimant by failing to provide a fair hearing and procedural due process requirements of Rule 37 of the Shop Crafts Agreement by capriciously and arbitrarily imposing discipline against the claimant in further violation of Rule 37 of the Shop Crafts Agreement.
3. That accordingly, the carrier be ordered to clear the record of the claimant and that claimant be exonerated from all charges; further that the letter of reprimand be removed from claimant's personal file."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On June 19, 1990, Claimant was notified of an Investigation, to be held July 6, 1990, concerning his responsibility in connection with an injury that he sustained on May 31, 1990. The Investigation was postponed to and held on August 3, 1990. On September 17, 1990, Claimant was issued a written reprimand for violating Rule 525. Rule 525 provides, in relevant part;

"Tools must be used defensively, so that slipping, unexpected movement or a glancing blow will not cause overbalance or injury."

The Organization contends that Claimant was denied a fair Hearing because Carrier allowed Claimant's supervisor to testify, even though the supervisor did not witness the incident under investigation. In the Organization's view, the supervisor's testimony was inadmissible speculation and hearsay.

The Organization also contends that Carrier failed to carry its burden of proving Claimant's guilt of the charges against him. The Organization contends that the only evidence against Claimant is the supervisor's speculation that Claimant should have positioned his wrench differently. The Organization argues that Claimant was required to work under unsafe conditions and with inadequate lighting, despite Claimant's having previously protested the conditions to his supervisor.

Carrier contends that Claimant was afforded a fair and impartial Hearing. Carrier further argues that the supervisor determined, following a post-incident discussion with Claimant, that Claimant should have positioned his wrench so as to have avoided injury. Accordingly, in Carrier's view, the evidence establishes that Claimant failed to use his tools defensively, in violation of Rule 525.

The Board has reviewed the Organization's procedural objections and finds that they lack merit. Based on our review of the record, however, the Board finds that Carrier failed to prove the charge that Claimant violated Rule 525.

On the day in question, Claimant was tightening a hex/head bolt with an impact wrench when the nut hit a tight spot, causing the wrench to slip and strike Claimant in the jaw, chin and lower lip. Claimant, his supervisor and another Carman who witnessed the accident all testified that Claimant was working in very tight quarters and had previously protested these conditions as unsafe.

Claimant's supervisor testified that Claimant failed to position the wrench so as to avoid being hit in the face. The supervisor, however, did not witness the incident and did not specify what Claimant had said which led to the supervisor's conclusion that the wrench had not been properly positioned. The other Carman who did witness the accident did not testify to an improper positioning of the wrench.

Claimant testified that because of the tightness of the area in which he had to work, he was off balance when he began the procedure, but had placed himself in the best possible position under the circumstances. According to Claimant, he positioned himself to be clear of the wrench if it came loose, but when the wrench hit the tight spot, it pulled him off balance and he was unable to avoid being hit. Claimant testified that after the accident he advised his supervisor of how the accident occurred.

Our review of the record finds no evidence that Claimant in fact positioned the wrench incorrectly. The fact of injury alone does not, in this case, establish proof that Claimant failed to use his tools defensively, in violation of Rule 525. See Second Division Award 12147. Accordingly, the claim will be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.