

Award No. 4616

Docket No. 4552

2-NYC&StL-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYES'
DEPARTMENT AFL - CIO. (Electrical Workers)**

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That Electrical Worker J. W. Evans was unjustly dealt with and the provisions of the agreement violated when Mr. Evans was assessed fifteen (15) days actual suspension without pay beginning April 16, 1962.

2. That accordingly the Carrier be ordered to compensate Mr. J. W. Evans for all time lost as a result of his unjust suspension.

3. That the fifteen (15) days involved in the unjust suspension be credited as days worked by Mr. J. W. Evans for the purpose of computing qualifying time for vacation, insurance, etc.

EMPLOYES' STATEMENT OF FACTS:

1. Mr. J. W. Evans is employed by the carrier in its communications department and his name appears on the seniority roster with the date of June 16, 1952.

2. Mr. J. W. Evans is regularly assigned as a lineman with headquarters in Boarding Cars.

3. Mr. J. W. Evans was notified by letter, dated March 2, 1962, to be present at a hearing to be held at Lima, Ohio, March 14, 1962.

4. Mr. J. W. Evans was notified by letter dated April 6, 1962 that he was assessed fifteen (15) days actual suspension.

rule in complete disregard for his own safety and then placed himself in a position and acted in a manner to cause the pole to break and him to fall to the ground. It was adequately established, as indicated above, that the claimant was negligent and that such negligence resulted in his being injured. He was also disciplined and the discipline assessed him was not excessive in the circumstances, nor in any respect an abuse of the carrier's discretion and prerogatives.

In discussing the case on the property, the vice general chairman took the position that the claimant had "suffered enough" by being injured and should not have been disciplined. The violation of Safety Rule 1713 in this case resulted in a serious accident, an accident in fact which could have readily resulted in fatal injuries not only to claimant, but to others. It was then and is the carrier's position that disciplinary action was warranted and required in a case of this nature whether or not the employe who violated the rule was injured as a result of such violation. The safety rules of the carrier are designed to protect the interests of the company as well as the safety of all its employes. It is the obligation of the carrier, if its safety goals are to be attained, to take whatever action it deems necessary to enforce its safety rules, including the assessment of discipline, if such rules are to serve their intended purpose.

The claim is without merit and should be denied.

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 employe 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.

The claimant was notified by letter that he should appear at a hearing on March 14, 1962 "to determine your responsibility, if any, for the accident on January 5, 1962, when you fell from pole . . . and were injured."

The facts show that claimant was a lineman, who, in company with his foreman and assistant foreman, was installing new arms on a new crossover pole. Each of these employes inspected the pole in question and satisfied himself that since none would be working off of it there was no necessity for securing it with guys, ropes or pike poles.

Safety Rule 1713 of the carrier provides as follows:

"The last wire on a defective pole must not be untied until the pole has been safely secured by guys, ropes or pike poles."

The claimant charges that he was not, by the letter referred to in the first paragraph herein, notified of the precise charge being made against him, therefore, Rule 18 of the applicable Agreement was violated when disciplinary action was taken against him prior to precise charges being made. Award No. 3313 of this Division involved the same parties and the same rule; in our

judgment the interpretation of the rule rendered in that award is sound. For that reason and for the sake of continuity of decisions we believe that the employes procedural position is in error and must be overruled.

As a result of the investigation claimant was suspended for 15 days. He was charged with having violated Safety Rule 1713 when he untied the wires on a defective pole without having taken the specified safety precautions.

We believe that the record contains sufficient evidence to conclusively show that neither claimant nor his supervisors—the foreman or assistant foreman—after performing a reasonable inspection of the pole, thought that it was defective. We conclude that since the safety rule does not make it mandatory that all poles being replaced be secured, the determination of what is a “defective” pole must be a matter of judgment for those persons on the scene. The record show that in this instance the pole was not secured for the reason that no one thought it to be defective.

We find that claimant did not violate the quoted safety rule and that his suspension was unjust. He should have his personal record cleared of the charge made against him and he should be compensated for all time lost.

AWARD

Claim sustained in accordance with the above finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 10th day of December, 1964.