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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6428
Docket No. 6277
2-LV-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 96, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Lehigh Valley Railroad Company

Dispute: Claim of Employes:

1. That within the meaning of the controlling agreement, particularly Rule 37, Carman Leonard Matyjasik was unjustly dealt with when discipline to the extent of a reprimand was given him and copy placed on his service record for alleged failure to exercise proper care which would have prevented injury suffered by him on March 19, 1971.

2. That accordingly the Carrier be ordered to rescind the letter of reprimand and remove copy of same from his service record.

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.

Claimant was employed as a welder. On March 19, he suffered an injury. On March 23, he received notice of a hearing to be held on March 26, "---in connection with your personal injury received on March 19, to determine your responsibility, if any, in this matter." The notice also advised claimant of his right to be represented at the hearing. The hearing was postponed for sufficient reason to March 30, and at claimant's request for a postponement, it took place on April 14. The Organization contends that the hearing was improper because the notice said it would be pursuant to Rule 46 and not according to Rule 37 which is the proper Rule for disciplinary hearings. Rule 46 relates to written reports of the circumstances of an accident and procedure to be followed by the injured employe. The Organization further contends that the claimant was not charged specifically so that he was not adequately prepared. In any event, it is claimed, the facts did not warrant a reprimand.

To follow the Organization's contention would require the investigation of the circumstances of the accident under Rule 46 and a further investigation under Rule 37. The facts to be developed would be identical. Two hearings under different Rules are not necessary to acquire the same information. The notice received was sufficient to advise claimant of the purpose of the hearing. It was timely. Claimant was represented and testified that the hearing was, "held in a fair and impartial manner and in accordance with schedule agreement." (Second Division Award No. 5244)

The Carrier had stated its intention to improve its safety record. The testimony disclosed that safety meetings were held each morning, attended by the claimant and that corrective measures were taken by the Carrier through these meetings. The Organization and claimant acknowledged that this was true.

The claimant testified that defective parts to be repaired by him were placed on the platform when he was not there. Although claimant had placed a metal object on the platform which may have caused the injury, there is no definite evidence that he could have avoided the injury. We could speculate upon whether or not the immediate area for his work was safe but speculation is not evidence. Whether or not claimant should have turned to his right or his left would be anybody's guess. His work did require movement and there is no evidence to prove that he moved in an unsafe manner. Under these circumstances, we believe that there was not substantial evidence upon which to find that claimant had committed an unsafe act.

The injury incurred on the job and is a matter of record. If the claimant had been accident prone, it could be a factor. There is no evidence to this effect or of prior warnings during his fifteen years of service. The Carrier's intention to improve safe conduct of employes on the job is for the best interests of all concerned including the public. It does not, however, justify an automatic official reprimand in claimant's file.

Under all these circumstances, we find that claimant received adequate notice of the purpose of the hearing which was a fair one; that the testimony did not provide substantial evidence that he could have avoided the injury; that the reprimand should not be placed in his file.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January, 1973.