

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8928
Docket No. 8793
2-BN-MA-'82

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { International Association of Machinists and
 { Aerospace Workers
 { Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement and the Burlington Northern schedule of rules, the Carrier unjustly suspended Machinist G. P. Lippert from service for a period of ten (10) working days, from February 27, 1979 through Monday, March 12, 1979 inclusive.
2. That accordingly, the Carrier compensate Machinist Lippert for all wages lost as a result of said suspension.

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.

Claimant was employed by the Carrier as a machinist at the Carrier's shop at Havelock, Nebraska, working the 3:00 P.M. to 11:00 P.M. shift.

On January 17, 1979, claimant was one of several employees leaving work by way of the staircase at the wheel plant. There was some partially melted snow, or slush as described by the claimant, covering a portion of the steps. In descending the steps claimant allegedly slipped as a result of which he reported an injury to his back.

On January 22, 1979, claimant was notified:

"Attend investigation in the Main Office Meeting Room at Havelock Shop at 1:30 PM, Monday, January 29, 1979, for the purpose of ascertaining the facts and determining your responsibility in connection with your alleged injury of January 17, 1979 at 11:04 PM.

Arrange for representative and/or witnesses, if desired, in accordance with governing provisions of prevailing schedule rules.

Please acknowledge receipt by affixing your signature in the space provided on copy of this letter.

E. J. Spomer
Shop Superintendent

cc: T. E. Silva"

The investigation was conducted as scheduled. On February 27, 1979, claimant was notified that he was suspended from service for ten working days, commencing at 3:00 P.M., Tuesday, February 27, 1979.

In its submission to this Board, the Organization alleges that Carrier (a) denied claimant a fair and impartial hearing; (b) suspended claimant from service when in fact the charges levied against him were not supported by substantial evidence in the record; and (c) denied claimant an objective review of the case on appeal to higher carrier officers. From our review of the record, we do not find where (a) and (c) were raised in the handling of the dispute on the property. It is well settled that exceptions to a charge or the manner in which an investigation is conducted must be raised during the course of the investigation; otherwise, they are deemed waived. However, the charge against the claimant was sufficiently precise to enable the claimant and his representative to prepare a defense. Furthermore, the Board has ruled that it is ~~not~~ necessary to cite specific rules in a letter of charge. See Awards 7936, 8495, 8492 and 8194.

We have reviewed the transcript of the investigation and find that substantial evidence was adduced to support the conclusion that claimant was fully aware of the conditions of the steps and failed to take the necessary precaution to avoid slipping. The record shows that some twenty-six or twenty-eight other men used the same steps on the same night without mishap. In the investigation claimant stated that he understood the Safety Rules of the Carrier. Safety Rule H provides:

"H. Employees must:

Not incur risk which can be avoided by exercise of care and judgment.

Take time to work safely.

~~Exercise~~ Exercise care to prevent injury to themselves and others."

In the handling on the property the Carrier pointed out that claimant had sustained seven previous injuries of a minor nature from September 27, 1977, until the incident here involved.

On the entire record, there is no proper basis for the Board to interfere with the discipline imposed.

A W A R D

Claim denied.

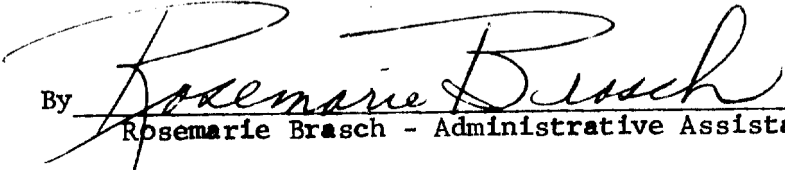
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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of February, 1982.