

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Freight Car Repairman Ratko Cocic was erroneously charged with failure to perform his duties in a safe manner on August 16, 1979.
2. Freight Car Repairman Ratko Cocic was unjustly assessed fifteen (15) days actual suspension on September 14, 1979, following investigation held September 12, 1979.
3. That the Chicago and North Western Transportation Company be ordered to compensate Freight Car Repairman Ratko Cocic eight hours pay per day for the 15 days he was unjustly suspended, plus all benefits to which he is entitled in accordance with Rule 35 (h).

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, Mr. R. Cocic, is a Freight Car Repairman working for the Chicago and North Western Transportation Company at Carrier's Proviso Yard, Proviso, Illinois. On August 24, 1979 Claimant was notified by letter, over the signature of Mr. E. Masech, to appear for formal investigation. Claimant was advised that the charge placed against him was the following:

"Your responsibility for your failure to perform your duties in a safe manner, specifically when you did not take adequate precautions when you removed a wheel from the wheel bed on August 16, 1979 at approximately 4:30 P.M., which caused injury to yourself."

After a number of postponements, an investigation into this matter was held on September 12, 1979. On September 14, 1979 Carrier issued Claimant Discipline Notice No. PRT-51: fifteen (15) days actual suspension.

A complete review of the circumstances of this case indicate that the Claimant did, in fact, begin to remove a wheel from the wheel bed in question at approximately 4:30 P.M. on August 16, 1979 without paying sufficient attention to the other wheels to determine beforehand if they were blocked or not. On the other hand, Carrier has not denied that it had historically been the practice at the wheel bed for the Store Department (and not Freight Car Repairmen) to block the wheels so that no damage would occur to the journals and bearings. In effect, both Claimant and Carrier are to blame for the subsequent accident which Mr. Cocic had i.e., a smashed finger.

It has been established in prior awards by this Board that it does not presume to substitute its judgment in discipline cases for those of the Carrier when charges are proven (See Second Division Awards 8308, 8322, 8326). There is substantial evidence in the instant case that Claimant's injury was due to carelessness, but there is also substantial evidence that the conditions for Claimant's injury were entrapment due to Carrier's negligence to perform a historically established work function. Since this is the case, and notwithstanding the Claimant's past record, the Board may, as it has in the past with other cases, justifiably reduce a penalty if it determines it to be excessive. Given the facts of this case, it has so determined.

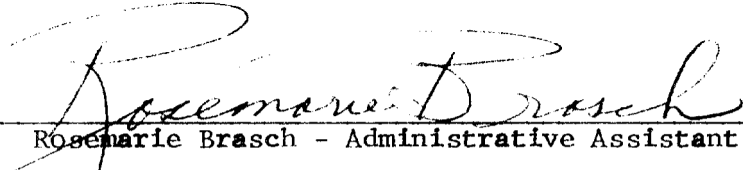
A W A R D

Claimant's actual suspension shall be reduced from 15 to 5 days.

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 3rd day of March, 1982.