

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(A.F.L. - C.I.O.
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to remove the discipline of five days suspension from the record of Machinist A. Maurer.
2. The Agreement effective May 1, 1979 is controlling.

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.

On February 8, 1980, the Claimant was applying a windshield wiper hose on one of the Carrier's units. The crescent wrench, which he was using slipped off the hose causing the Claimant to injure his elbow on the door frame of the unit. Carrier charged Claimant with violation of Safety Rule 4085 (E), (F) and (G), which essentially contains instruction concerning the proper use of a wrench.

The Board finds no evidence in the record that, in fact, the rule used to arrive at the penalty was violated. The mere assertion by the Carrier that, had the Claimant been more careful and had he performed his duties in the safe manner expected of him, does not meet the burden of proof required of the Carrier. An injury per se does not establish a rule violation.

Absent substantial evidence that the rule relied upon by Carrier was violated, the claim is sustained.

A W A R D

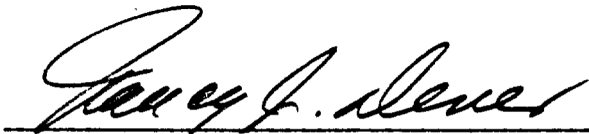
Claim sustained

Form 1
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Award No. 9583
Docket No. 9777
2-CR-MA-'83

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

A handwritten signature in cursive script, appearing to read "Nancy J. Deyér", is written over a horizontal line.

Nancy J. Deyér - Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1983.