

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to reimburse Machinist Brian P. Szarek for the fifteen days suspension at the prevailing machinist rate of pay, in accordance with Rule 7-A-1 (e) of the prevailing Agreement effective May 1, 1979.

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 employees 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, Brian P. Szarek, entered the Carrier's service as a Machinist on September 30, 1979. On February 9, 1981 he suffered an on-the-job injury to his back and shoulder. The injury occurred when Claimant slipped on the ice while signalling the unit 8842 to move back for water.

Due to this incident, Claimant was requested to attend a trial on March 9, 1981 in connection with the following:

"Violation of Safety Rules: 4005, 4008, 4465 I, 4467 A & B of the Conrail Safety Rules for MofE employees, S7D, effective July 1, 1968, when you received a personal injury at Ohio Street on February 9, 1981 at approximately 8:20 A.M."

The trial was postponed at the request of the Claimant and was subsequently held on March 20, 1981. The Claimant was found guilty as charged and was assessed 15 days suspension. The manager of labor relations sustained the employees' contention that the Claimant did not violate safety rules 4465 and 4467 and reduced the suspension to 10 days. Thus, Rules 4465 and 4467 are not at issue here.

The Rules at issue in this case are as follows:

Rule 4005:

"Clean and/or apply salt, sand, cinders, or other suitable material on surface made slippery by weather or other condition if necessary to use it in the performance of work."

Rule 4008:

"While walking, look ahead and stay clear of opening or tripping, falling or slipping hazard. If necessary to look away from direction in which moving, stop while doing so."

The Organization contends that the Carrier failed to meet its burden of proving Claimant guilty of the charges against him. The Organization argues that the Carrier's only witness testified that he did not observe the Claimant violating any safety rules.

The Carrier asserts that the Claimant, by his own admission, did not clean and/or apply salt, sand, cinders, or other suitable material on the slippery surface where he was standing in violation of safety rule 4005. The Carrier also states that he did not stay clear of a slipping hazard, in violation of safety rule 4008.

To this end, Carrier cites the following excerpts of Claimant's testimony found on pages 9 and 10 of the transcript:

- "Q. Mr. Szarek could you please describe the condition of footing in Ohio Street Yard on February 9, 1981 at approximately 8:20 A.M.?
- A. In the area that I was working at that time the condition was lightly snow covered.
- Q. Mr. Szarek was the entire Ohio Street Yard area icy and slippery?
- A. I can't say the entire Ohio Street Yard area. I don't know. That would be an opinion by me.
- Q. Mr. Szarek could you describe the condition of the footing where you were standing at approximately 8:20 A.M. on February 9, 1981?
- A. To the best of my knowledge I was standing on snow, but I soon found out that I wasn't. I assumed that I had a firm footing on the ground.
- Q. Mr. Szarek could you have stood somewhere else, which was not ice covered, and signaled Unit 8842 to move back for water?
- A. (None)

MR. LODOWSKI: Let the record indicate that Mr. Szarek is conferring with his Union Representative prior to answering the question.

- A. I don't believe that there was a spot in which I could have stood that I felt was safer or more visible than where I was.
- Q. Mr. Szarek did you apply salt, sand, cinders or other suitable material on the surface made slippery by the ice?
- A. As I answered before I assumed I had a good footing. I thought that I was standing on snow and there was no need for salt, sand or cinders.

* * *

- Q. Mr. Szarek were you walking when the accident occurred on the morning of February 9, 1981 at approximately 8:20 A.M.?
- A. No sir. I had just turned to walk ahead when the accident occurred.
- Q. Did you stay clear of slippery hazards on the morning of February 9, 1981?
- A. I certainly thought that I did."

The Carrier asserts that it has the responsibility of operating its trains in such a way as to secure the highest degree of safety for its passengers, employes, and shipper's property. In order to fulfill these responsibilities, the Carrier has established safety rules and operating rules. Violations of these rules endanger the welfare of its employes and patrons. Thus, the Carrier must discipline violators of these rules.

It is the considered opinion of this Board, that Claimant, by his own testimony, is guilty of violating safety rules 4005 and 4008. Claimant testified that he did not apply any of the prescribed materials to the work area because he "assumed he had good footing ... and thought that there was no need for salt, sand, or cinders." He further testified that he "thought" he was clear of slipping hazards.

Obviously Claimant "thought" and "assumed" wrong. The Carrier does not create safety rules so that employes can "assume" that they do not need to follow them. Safety rules are meant to protect the employes from injury as well as the Carrier from liability. Violations of such rules are not to be taken lightly.

It is clear that this Board has no authority to set aside discipline unless it is shown that the Carrier's action is arbitrary or unreasonable. Carrier's action here was not arbitrary or unreasonable. Claimant's ten-day suspension for the violations of these rules is proper.

This was not Claimant's first on-the-job injury. According to the Carrier the Claimant has sustained a total of 17 personal injuries in his 11 years of service. There was sufficient background to impose this discipline.

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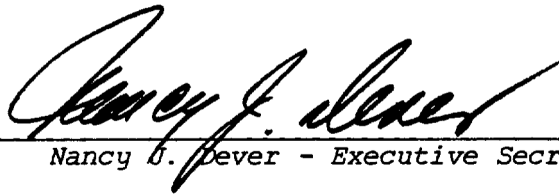
Award No. 10071
Docket No. 10197
2-CR-MA-'84

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of September, 1984.