

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

(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That the Indiana Harbor Railroad Company be ordered to compensate Machinist J. M. Perez five days pay at the prevailing Machinist rate of pay.

2. That the Indiana Harbor Railroad Company be ordered to remove the twenty day record suspension from the service record of Machinist J. M. Perez.

3. The agreement effective January 1, 1947 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 employes 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.

Subsequent to an investigation held on January 22, 1981, the Claimant was found guilty of violating a number of the Carrier's safety rules. He was assessed with a five-day suspension and a twenty-day record suspension.

The essence of the Organization's arguments is that the Carrier did not meet its burden of proof, in that there was no evidence to establish the Claimant's alleged negligence. Moreover, it maintains the Carrier must assume a greater degree of responsibility for the incident which caused the Claimant's injury, since it assigned the Claimant to work in an area not normally his own, and since it knew that this area needed to be cleaned. In addition, it asserts Carrier was in error when it allowed the Claimant's disciplinary record to be included in the hearing transcript.

For the reasons given in the record, the Carrier argues that this claim should be set aside on procedural grounds because it does not conform with the requirements of Circular No. 1. With respect to the merits, it relies upon testimony adduced at the hearing to find that the Claimant was guilty of the charge. Having so found, it maintains that the Claimant's past record rightfully may be considered in assessing penalty.

The Board does not find sufficient evidence to support the Carrier's procedural argument. However, on the substantive issue, while the Organization's contentions with respect to the condition of the work place are not without merit, the Claimant cannot absolve himself of being negligent, the primary cause of the injury. He admitted that he had been asked to clean the work area, which in effect, put him on notice as to its condition. Thus, under the circumstances, the Carrier's findings are not unreasonable. Accordingly, given the Claimant's past record, the penalty assessed is not considered excessive.

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 10th day of April 1985.