

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen of the
(United States and Canada
Parties to Dispute: (
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company subjected Claimant, Carman Gary L. Deaton, Dayton, Ohio to an unfair and partial hearing on the date of May 6, 1982, contrary to Rule 32 of the controlling Agreement, and subsequently, subjected him to discipline of "Five (5) days overhead suspension for a three (3) month probationary period as an alleged result of such hearing, wherein the alleged charge against Claimant by Carrier amounted to an alleged violation of Safety Rule No. 127, Book of Safety Rules, at 7:45 P.M. on March 29, 1982, in Needmore Yards, Dayton, Ohio, resulting in personal injury to Claimant Deaton.

2. That Carman Deaton, Claimant, is entitled to be completely and totally exonerated in connection with any wrong doing and/or violation of the Book of Safety Rules, in this instance, rule No. 127, with regard to this unfortunate incident. That the charge as alleged by Carrier, violation of Rule No. 127, Book of Safety Rules, be declared null and void, and that Claimant's record be cleared accordingly.

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.

On March 29, 1982, during the performance of his duties, Carman G. L. Deaton, Claimant, lost his grip on an air hose which then struck him in the leg. The injury was reported as required by the Rules. An investigation was held on May 6, 1982 to consider an alleged violation by the Claimant of Safety Rule Number 127 which states:

"Before opening an angle cock on an uncoupled air hose, either hold the air hose or take other precautions to prevent injury from hose movement."

As a result of the investigation, the Claimant received notice of June 2, 1982 that he had been found guilty as charged and assessed a five (5) days overhead suspension for a three (3) month probationary period.

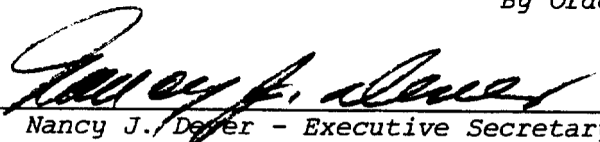
A thorough review of the case at bar finds that the Claimant received a fair and impartial hearing. The results of the investigation provide substantial probative evidence that the Claimant was guilty as charged in that he was required by the rule to take whatever precautions were necessary to avoid injury. Clearly, whatever precautions the Claimant engaged in to avoid injury when he opened the angle cock on the uncoupled air hose, he failed to take the necessary precautions for safety. The evidence of record indicates that the Claimant was required by the rule to be careful and in fact was somewhat careful but not careful enough to overturn the Carrier's decision in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1985.