

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

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
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(Richmond, Fredericksburg and Potomac Railroad Company

STATEMENT OF CLAIM:

1. That, in violation of the current agreement, the Richmond, Fredericksburg, and Potomac Railroad Company arbitrarily disciplined Machinist C. O. Williams by unjustly assessing a two (2) day actual suspension for September 13 and 14, 1988.

2. That accordingly, the Richmond, Fredricksburg, and Potomac Railroad Company be ordered to compensate Machinist C. O. Williams two (2) day's pay at the pro-rata rate of pay in effect for September 13 and 14, 1988, and that his record be cleared immediately.

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.

Claimant was employed as a Machinist at Carrier's Bryan Park Terminal in Richmond, VA. On August 11, 1988, the Claimant, while using a forklift to load railroad car wheels into a gondola car, damaged the forklift. The forklift was out of service until September 7, 1988, undergoing repairs.

Under date of August 11, 1988, Claimant was notified to attend an Investigation, and was charged:

"...with the responsibility for damage to forklift L-570 on Thursday, August 11, 1988 at approximately 9:30 A.M."

Following the Investigation, the Claimant was notified he was found guilty as charged and the penalty was a two-day suspension.

A review of the testimony indicates that the Investigation was conducted in a fair and impartial manner.

The Organization argues that the Carrier did not meet its burden-of-proof in this case because it did not prove that Claimant was responsible for the damage to the forklift. The Organization also argues that the forklift was not in safe operating condition and that the accident was unavoidable. We do not agree with the Organization's argument. The Claimant admitted he was operating the forklift at the time of the accident. His excuse was that his foot slipped off the brake pedal onto the gas pedal. Testimony given at the Investigation by the Diesel Supervisor leads this Board to believe that the Claimant was operating the forklift in an improper manner and contrary to Safety Rules. There was no testimony given at the Investigation that the Claimant had reported that the forklift was not safe to operate or that he was using the forklift under protest.


While the record is not without its uncertainties, we believe the evidence is of sufficient force to provide a reasonable basis for Carrier's conclusions and they do not appear to be unreasonable or capricious. It is our conclusion that the Carrier in this case did meet its burden-of-proof. We do not believe the accident was unavoidable but, rather, believe it was caused by the Claimant operating the forklift in an improper manner and contrary to Safety Rules.

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 17th day of July 1991.