

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
(
(CSX Transportation, Inc. (formerly Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "Carrier") violated Rule 37 of the Shop Crafts Agreement between Transportation Communications International Union - Carmen's Division and the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) on November 8, 1988, when it assessed a letter of reprimand against Carman Gary Baker (hereinafter "claimant") on account of alleged violation of Safety Rule 10 of CSX Safety Handbook.

2. That the Carrier violated the service rights of the claimant by failing to provide a fair hearing and procedural due process requirements of Rule 37 of the Shop Crafts Agreement by failing to apprise the claimant of the precise charges against him within a reasonable time prior to the investigation; by capriciously and arbitrarily imposing discipline against the claimant in further violation of Rule 37 of the Shop Crafts Agreement.

3. That accordingly, the Carrier be ordered to clear the record of the claimant and that the claimant be exonerated from all charges; further; that the letter of reprimand be removed from the claimant's personal file.

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.

The Claimant was given a Notice of Investigation dated September 1,

1988 regarding a personal injury suffered by the Claimant on August 16, 1988. The Claimant was charged with failure to comply with Rule 10. On November 8, 1988, the Carrier placed a letter of reprimand in the Claimant's file for violation of Safety Rule 10. It is the Carrier's position that safety is very important to the operations of the Carrier. The Claimant was afforded a fair and impartial Hearing. The Claimant and the Organization were well aware of the incident being investigated. They had ample time to prepare, and the Carrier is not always required to cite a Rule with respect to its Investigation. The charges were precise, and the Claimant could and did prepare an ample defense with whatever witnesses he deemed to be pertinent.

Regarding the merits of the case, the Claimant was found to be at fault in the letter of reprimand and, therefore, it is fully justified. The Claimant's foot slipped on a rung of a ladder while lifting another ladder. It is the fault of the Claimant that he was not more careful considering there was grit on the ladder. The Carrier did prove a violation of Rule 10 and noted that the ladders were OSHA approved. Therefore, the Carrier requested that the Claim be denied.

The Organization argued that the Claimant was denied a fair Hearing in violation of Rule 37. He was not apprised of the charges against him and, therefore, there was an inadequate defense. With respect to the merits, the Carrier is clearly attempting to shift the blame for the injury from itself to the Claimant. The Carrier was not using proper equipment but chose to use makeshift equipment, thus creating a dangerous situation for the Claimant. Rule 10 is a catchall Rule in which they can always allege that someone was not watching where he/she was stepping. There are no facts or documentation anywhere showing that the ladders being used were approved by the proper authority. Therefore, the Carrier violated its own Safety Rules and, in turn, the provisions of Rule 47 of the Agreement which provide for a safe working environment. Therefore, the Organization asked that its Claim be upheld in full.

Upon complete review of the evidence, the Board finds the Organization's procedural arguments to be without merit. However, the Carrier has not proven its case in any essential respect. The Claimant was not shown to be acting in an unsafe manner, and the injury was in no way proven to be the Claimant's responsibility. Rule 10 states: "Employees must watch where they step at all times." The Board finds there was no showing that the employee did not comply with Rule 10. Therefore, the Claim will be sustained.

A W A R D


Claim sustained.

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Award No. 12147
Docket No. 12071
91-2-90-2-191

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1991.