

The Second Division consisted of the regular members and in addition Referee Nancy Connolly Fibish when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and  
( Aerospace Workers  
(CSX Transportation, Inc.  
(former Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM:

1. That CSX Transportation, Inc. violated Rule 30, but not limited thereto, of the controlling Agreement when it unjustly suspended Machinist E. L. Youngblood for five working days following an investigation held on April 3, 1990.

2. That accordingly, CSX Transportation be ordered to compensate Machinist Youngblood for all pay and benefits lost (made whole) as a result thereof and remove all reference to the charges from his record.

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 has been employed by the Carrier since December 29, 1972. He was working as a machinist in the engine house at the Carrier's Waycross, Georgia facility on January 28, 1990, when he sustained an injury, while he and a fellow Machinist were assigned to remove a section of the exhaust manifold on a G.E. locomotive. The exhaust manifold was flanked by two raised overhead covers which, on the date in question, were not supported by pins. In trying to loosen some extremely tight bolts, a fellow Machinist used the overhead cover on his side of the engine for a brace; it came loose and fell against the cover on Claimant's side of the engine, causing that cover to fall on Claimant's helmet. The resulting injury, a sprained neck and head injury, prevented Claimant from working for 45 days.

Claimant was subsequently charged with a violation of Rule 1 of the Safety Handbook. Rule 1 reads:

"Safety is the first importance in the discharge of duty. Employees must exercise care to avoid injury to themselves or others. The company does not expect, and will not permit any employee to take any unnecessary risk in the performance of duty. No job is so urgent that sufficient time cannot be allowed to perform all work safely."

A formal Investigation was held on April 3, 1990, and on April 30, 1990, Claimant was given a five day suspension. Following the subsequent filing of appeals and denials, including the conference held on November 2, 1990, the parties were unable to resolve this dispute.

The Organization's initial position was that the Carrier, through its policy of automatically placing charges against an employee in all cases involving a personal injury, prejudices the employee and violates Rule 30 of the Agreement. (Rule 30 is the contract's grievance procedure.) It subsequently stated that the Carrier had violated Rule 32 of the Agreement, which reads: "At a reasonable time prior to the hearing such employee and the local chairman will be apprised in writing of the precise charge against him." The Organization contends that Safety Rule 1 is a general "catch all" Rule which does not constitute a precise charge. Also the Organization holds that management failed to prove the charges against the employee and that, even if it had, the discipline assessed was excessive.

There appears to be no dispute between the parties that management had implemented a new safety policy at Waycross Shops in 1990, making it mandatory for charges to be leveled against an employee in all cases involving a on duty injury. The fact that the Carrier did not cite a more specific Rule than Safety Rule 1 does not of itself appear to violate Rule 32 of the Agreement since it cited the date of the personal injury in its letter of notification to the Claimant and gave sufficient time to the Claimant to prepare for the Hearing. In short, the fact that the charge was filed against the Claimant, in keeping with the Carrier's policy in on site personal injury cases, does not constitute prejudging of the Claimant. The Hearing was held to determine what responsibility the Claimant had, if any, for the accident which caused his injury. Nor is there anything in the transcript in the file to suggest that the procedural conduct of the Hearing on the property was not impartial and fair.

The Board has reviewed the entire record of the case, including the transcript of the testimony given at the Investigation and the employee's personnel file. This case turns on the degree of responsibility the Claimant had for his injury, on whether he had sole responsibility or major responsibility, or whether others, including fellow workers and supervisors, shared that responsibility. Carrier's senior General Foreman testified that it was the Claimant's responsibility to check the safety pins in the hatch cover

before working but was uncertain that a bulletin to that effect had been posted. The Claimant's direct supervisor testified that it was a machinist's responsibility to report missing safety pins and a boilermaker's responsibility to replace them, but that the checking of pins as such had not been the subject of safety discussions before the injury and that it had not become a known practice for the employees to check the pins and hinges, or for him to remind them, until after the accident occurred. A fellow machinist testified that, while he had replaced a pin on a locomotive hood after the January 28, 1990 injury to the Claimant, he had never done so before and that he had never been told to inspect pins and hinges to be sure they were in place. A Sheet Metal worker testified that no one, including himself, regularly checked raised open hatch covers to see that the pins were in place.

The Claimant testified that, while he had checked open hood covers since returning to work to make sure pins and hinges were in place and while he had been reminded by supervisors to do so since the injury, he had never been told to check the pins, nor had he seen a safety bulletin about the pins, nor had they been the subject of safety meetings before his injury.

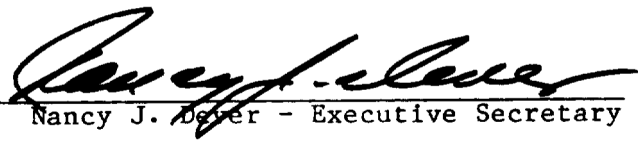
The claim is not sustained with respect to Carrier's violating Rule 32 in that the charge was sufficiently precise. Furthermore, safety is of primary concern in the railroad industry, and management has the right to investigate such charges and to administer discipline for substantially proven violations of any safety rule. The difficulty in this instance is that the "responsibility" as such for the accident that caused the injury cannot be attributed only to the Claimant. Not only was there another employee involved, but there appears not to have been any particular notice taken of the safety hazards of locomotive hoods being open without safety pins by either supervisors or other employees before this accident. Management certainly seems to have made its point in this case if its aim (a laudatory one) was to impose discipline in order to improve safety on the work site. However, while the Claimant bears some responsibility and merits some discipline, the suspension should be reduced to one day and the Claimant made whole under the terms of the contract for the remaining four days of the suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1992.