

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12767
Docket No. 12591
94-2-92-2-124

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

(Brotherhood Railway Carmen Division
(Transportation-Communication International
(Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railroad 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 September 17, 1990, when it assessed a letter of reprimand against Carman Cornell C. Hale (hereinafter "Claimant") on account of alleged violation of Safety Rules 1 and 922 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 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 employee or employees involved in this dispute are respectively carrier and employee 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 of hearing thereon.

Claimant is employed by Carrier at its Car Shop in Raceland, Kentucky. On Friday, June 1, 1990, Claimant worked on a two-man operation that involved moving a center body rod off a hopper car and placing it on a cutting table. (The rod was 36 feet long and made of flexible steel). The second Carman placed his end of the rod on a cutting table. He then proceeded to move to the center of the rod to lift it up and place it on the center rod support table. Claimant, who was holding his end of the rod waist high, did not wait for assistance. Rather, he attempted to lift the rod to the center table himself by raising his end of the rod above his head. In the process, he pulled a muscle in his groin.

Claimant filled out an accident report. As a result of this accident, he was charged with a violation of Carrier's Safety Rules 1 and 922. These Rules read in pertinent part as follows:

"SAFETY RULE 1

Safety is of the first importance in the discharge of duty and working safely is a condition of employment with the Company. It is the duty of every employee to use personal judgement and 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. In case of doubt or uncertainty, the safe course of action must always be taken. No job is so urgent that sufficient time cannot be allowed to perform all work safely."

"SAFETY RULE 922 (j)

(j) If load is awkward to handle or too heavy, get help."

An Investigation was held on July 26, 1990. As a result of that Investigation, Claimant was found guilty of having worked in an unsafe manner in violation of the cited Rules. Claimant's actions resulted in an injury to himself.

The Board has reviewed the record of this case. Based upon that review, we conclude that Claimant was afforded a full and fair hearing and that he did in fact work in an unsafe manner.

The record reveals that Claimant lifted his end of the brake rod above his head in an attempt to raise the center of the rod high enough to flip it onto the center table. This maneuver may have been effective if it had worked, but it is not the appropriate way to handle such a piece of material. Carrier properly concluded that some level of discipline was appropriate in this instance. A Letter of Reprimand to Claimant makes the point to him, as well as to his fellow employees, that safe working habits are required.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of November 1994.