

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13157
Docket No. 13037
97-2-95-2-63**

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(International Brotherhood of Electrical Workers
(System Council No. 9**

PARTIES TO DISPUTE: (

**(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company)**

STATEMENT OF CLAIM:

- "1. That CSX Transportation, Inc., formerly L&N Railroad Co., in violation of Rule 34, unjustly disciplined Electrician T. E. Fournier by fifteen (15) days suspension as a result of investigation on March 9, 1993, and accordingly;**
- 2. That CSX Transportation, Inc., compensate Electrician T. E. Fournier for all compensation lost, including reinstatement of all benefits unimpaired and that all reference to this unjust suspension be removed from his 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 were given due notice of hearing thereon.

On February 23, 1993, Claimant was assigned to inspect locomotive numbers 7515N, 7598S and 2626N which were located on the Hold Track, at the Evansville Locomotive Center. Once the inspections were complete, Claimant dismounted the last unit and proceeded toward the inspection pit shack. In view of the weather, the locomotive cabs were heated. As Claimant encountered the cold weather, his prescription glasses began to fog up, threatening to obscure his vision. Moments later, Claimant's foot slipped between the ties. Claimant was taken to the hospital, where it was determined that the resultant injury was a broken ankle, requiring a cast on his right leg just below the knee. Claimant completed the requisite personal injury report.

By letter of March 2, 1993, Claimant was directed to appear for an Investigation into the event. The charge read in pertinent part as follows:

"... You are charged with your responsibility, if any, in connection with your personal injury at or about 08:35 A.M. on February 23, 1993 at the Evansville, Indiana Locomotive Service Center."

Following the Investigation, Carrier informed Claimant that he was assessed a 15 day suspension.

It is the position of the Carrier that Claimant's negligence, both regarding his steamed-up glasses and his choice of path across the tracks, caused Claimant's injury. However, the record does not support the Carrier's position. It is unrefuted that Claimant chose the pathway he took because the walkways beside the track were not reasonably accessible to him. Although the Carrier suggested he could have walked much farther around the locomotives to reach the walkway on the other side of the tracks, Claimant's admission that "that was a possibility" does not compel the conclusion that he was negligent in the path he chose. Rather, Claimant exercised his judgment and walked behind the operating portion of the derail. He noted that the path Carrier suggested at the Hearing had visible frost and ice, and he chose what he felt was the less dangerous path to the inspection pit shack. Moreover, Claimant testified without contradiction that he reached to take his glasses off as soon as they started to fog up -- some distance from the locomotive he had dismounted -- but in doing so, his vision was temporarily distorted causing him to misstep.

Under the circumstances, the events precipitating this discipline must be viewed as an accident. The Carrier failed to show that Claimant contributed in any way to the incident at issue. Thus, no discipline was warranted.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 8th day of September 1997.