

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13986
Docket No. 13839
08-2-NRAB-00002-070028
07-2-28**

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13.1, when Kenneth Gardner allegedly violated a safety rule.**
- 2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carman Kenneth Gardner in the amount of five (5) days at the straight time rate of pay for suspending Kenneth Gardner from service. Also, to expunge his record of anything contained in this discipline notice.”**

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.

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Parties to said dispute were given due notice of hearing thereon.

On December 16, 2005, Carrier notified Claimant to appear for a formal Investigation on December 23, 2005, which was postponed until May 26, 2006 concerning the following charge:

“This Notice of Hearing is issued to develop the facts and place your responsibility, if any, in connection with the incidents outlined below:

**Violation of the Springfield Terminal Railway Company Safety Rule:
GR-D**

Details of Violation: On December 8, 2005 at approximately 1135 hours while rerailing car CRLE 19083 on the Terryville Loop Track, you were struck on the left hand breaking the ring finger.

Date: Dec. 8, 2005 Time: 1135 Hours Location: Terryville Loop Track”

On June 23, 2006, Claimant was notified that he had been found guilty as charged and was assessed a five day suspension without pay.

It is the Organization’s position that the Carrier erred in suspending the Claimant because he was not guilty of working in an unsafe manner. It argues that Claimant a 36 year employee while rerailing a car broke his ring finger on the left hand through no fault of his own. According to it the facts are no one saw the injury occur when the come-a-long he was using broke while turning a truck under a box car. Claimant was using the heaviest come-a-long (ton and one/half) available which he visually inspected prior to operating and found nothing wrong with it. It points out that the Supervisor that examined the come-a-long after the accident did not find anything wrong with the tool. It also argues that the Carrier violated the time limits by not furnishing it a copy of the Investigation transcript in a timely manner.

The Organization concluded that the Carrier failed to meet its burden of proof that Claimant performed his work in an unsafe manner and requested that the suspension be rescinded.

It is the position of the Carrier that Claimant did not exercise care to prevent injury to himself as the record establishes that Claimant violated Safety Rule GR-D which states:

“Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.”

It argued that the evidence indicates that the Claimant was in the process of using the come-a-long to re-rail a car at the time of the incident when the tension was overloaded as the car shifted and the come-a-long broke, thereby injuring his hand. Because Claimant was injured it reasoned he did not have his hands in a safe place to avoid injury in case of a tool slippage or break thus he violated Safety Rule GR-D. It also argues that it is disingenuous for the Organization to raise any issues concerning Rule 13 (Time Limits). It stated it sent the transcript to the Claimant and Mr. Fulton (Claimant's Local Representative) in a timely manner and more importantly, it waived the time limits for appealing this matter after BRCD Special Representative indicated that he had not initially received the transcript. Last, it argued that the discipline assessed was appropriate and should not be disturbed.

The Board has been furnished a copy of a RELEASE OF ALL CLAIMS signed by the Claimant and the Carrier that cover the issue in dispute and releases the Carrier of any further liability for this and any other claims. Therefore, the Board finds and holds that the merits of this dispute do not need to be further examined as the issue has become moot, thus the claim must be dismissed.

AWARD

Claim dismissed.

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ORDER

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 30th day of December 2008.