

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14017
Docket No. 13899
10-2-NRAB-00002-090012**

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

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

STATEMENT OF CLAIM:

“Claim of the Employees’:

- 1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13.1 when they ultimately removed Carman Noel J. Leveille from service without pay for three (3) calendar days as a result of a hearing on January 22, 2008 in the East Deerfield Mechanical Department.**
- 2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carman Noel J. Leveille in the amount of three (3) days pay for the time that he was suspended. This is the amount he would have earned had the Carrier not violated the Agreement."**

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 January 10, 2008, the Carrier notified the Claimant to report for a formal Investigation on January 22, 2008, concerning the following charge:

"Charges: Negligence in the performance of your duties.

Specifically: On the morning of January 2, 2008, you were ordered by your direct supervisor, Paul Tringali, to load rolls of paper from the car shop area into the Box Trailer 1041 and take it to GMX to be off loaded.

Specifically: On this morning around 10:30 hours while you were loading one of the rolls of paper into the Box Trailer 1041, that was parked down in front of the Engine House loading dock, once inside the trailer with the forklift, the paper on your forks shifted and you reacted by grabbing the mast lift lever, which made the mast go up punching a hole in the roof of the box trailer 1041.

You are charged with failure to comply with Rule P278, entitled

MATERIAL HANDLING

Specifically, load on forklift truck must not be raised or lowered traveling. Care must be taken when working with the forklift."

On February 19, 2008, the Claimant was notified that he had been found guilty, as charged, and was assessed a three calendar days suspension.

It is the position of the Organization that the Carrier erred in suspending the Claimant. It argued that the Claimant, while working alone, was safely loading paper rolls that weigh approximately 1,000 pounds when one of the rolls began to

fall off of the forklift while the machine was not moving. He reacted by grabbing the mast lift lever to stop the roll from falling and, unfortunately, he poked a hole in the roof of Box Trailer 1041. According to the Organization, the incident was an unavoidable accident which happened to a ten plus year employee with a good work record. It concluded by arguing that the discipline should be set aside.

The Carrier argued that there is no disagreement that the Claimant poked a hole in Box Trailer 1041. It points out that the Claimant admitted that while he was loading paper, a roll of paper was falling off of the forks, so he reacted by grabbing the mast lift lever, which punched a hole in the roof of the trailer. According, to the testimony of Assistant Superintendent, Mechanical Department - West, J. Rae, the Claimant admitted that his reaction of lifting the lever too quickly was a mistake. Therefore, based upon the testimony of the Supervisor as well as the Claimant, the Carrier argued that it met its burden of proof. It concluded by arguing that the discipline was appropriate and should not be set aside.

The Board reviewed the transcript and record evidence and determined that there were no procedural violations involved in the handling of the case. There is absolute proof that the Claimant was the only individual involved in poking a hole in the trailer. There are some instances in which an accident is unavoidable, but this is not one of those cases. The accident could have been avoided if the Claimant had not overreacted with too quick a movement of the mast lift lever. The record is clear that the Carrier met its burden to prove that the Claimant was guilty, as charged.

The only issue remaining is whether the suspension was appropriate. The Claimant at the time of the incident had a little less than ten years of seniority with a previous Letter of Reprimand on his personnel record. The purpose of discipline is to correct an employee's inappropriate behavior. In this instance, the Carrier issued a progressive discipline of three calendar days' suspension to the Claimant as a forewarning that he must strive to work carefully. The Board finds and holds that the three calendar days' suspension was corrective in nature and not arbitrary, excessive or capricious. Accordingly, the discipline will not be set aside.

**Form 1
Page 4**

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AWARD

Claim denied.

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 14th day of January 2010.