

Award No. 3808

Docket No. 3691

2-PRR-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1 — That under the controlling Agreement Machinist W. J. Gallo was unjustly dealt with when the Carrier suspended him five (5) days for an alleged violation of Safety Rule No. 4073, and caused him to lose an additional day's wages in appealing said suspension.

2 — That the Carrier be order to:

(a) Compensate him for his wage loss on October 23, 24, 25, 26 and 27, 1958, the five (5) days he was suspended and for October 3, 1958, the day he was required to lose in having his appeal heard.

(b) Remove the notation of discipline from his record.

EMPLOYEES' STATEMENT OF FACTS: W. J. Gallo, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, as a machinist, in the enginehouse, at Wilmington enginehouse, Wilmington, Delaware.

On September 8, 1958, the claimant was required to stand trial on the charge that he had violated Safety Rule No. 4073 on August 24, 1958. Safety Rule No. 4073 is as follows:

“Before handling material or object determine the best place to take hold. Place hands in proper position and take grip or hold sufficient to prevent material or object falling from hands or getting out of control.”

“Violation S.R. 4600T	11-17-50	— Reprimand 12-18-50
Violation S.R. 4402	6- 4-54	— 1 day suspension approved but not placed in effect account em- ploye furloughed
Violation S.R. 4600M	5-26-55	— 1 day suspension 6-30-55
Violation S.R. 4468	2-13-57	— 2 days suspension 4-27-57
Violation S.R. 4205	4-25-58	— Reprimand 6-30-58”

In view of this past record of discipline, which shows that repeated discipline has been required against this claimant because of his violations of the safety rules referred to on his record, carrier submits that the suspension of five days given the claimant was by no means excessive.

The carrier submits that for the reasons summarized below, its action in disciplining the claimant was proper and should not be disturbed.

1. The claimant was afforded a fair and impartial trial at which he was accompanied by a representative of his own choosing and at the conclusion of which he answered in the affirmative to the question “Mr. Gallo has this statement been taken in a fair and impartial manner?”

2. The testimony of the claimant at his investigation and trial represented more than sufficient evidence to support the charge.

3. Safety Rule 4073 was precisely applicable to the circumstances here involved and claimant was properly charged with a violation of said rule.

4. The employes have presented no valid evidence whatsoever to support their contention that claimant was improperly charged with violation of Safety Rule 4073.

In view of all of the foregoing, the carrier respectfully requests your Honorable Board to deny the claim of the employes in this matter.

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 employe 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.

Claimant was charged with violating safety rule 4073, which reads as follows:

“Before handling material or object determine the best place to take hold. Place hands in proper position and take grip or hold sufficient to prevent material or object falling from hands or getting out of control.”

Specifically the charge seems to be that claimant did not “take grip or hold sufficient to prevent * * * object * * * getting out of control”; for the object (the hand truck) did get out of control. But the evidence does not

show that it did so because of an insufficient grip or hold. On the contrary, it showed that the rolling of the 500 or 600 pound drum of oil is what took the truck out of control, and that since its weight must have been about three times his own, no possible hold by him could have kept the truck under control.

In other words, what claimant violated was safety rule 4081, which provides as follows:

“Load material securely to prevent its shifting or falling from truck, trailer or skid. Securely block round material or objects to prevent them from rolling. Secure load with rope, wire or chain where necessary.”

It is obvious that claimant's failure to obey this rule was the direct cause of the accident, and that the nature of his grip on the handles had little or nothing to do with it.

If the charge had been negligence in handling the truck and load in violation of the safety rules, the evidence would have sustained it. But the specific charge was the violation of rule 4073, and the record showed a violation of rule 4081. An employe may not be tried on one charge and convicted of another.

The claim is for compensation for claimant's five days suspension, and also for the day lost in the hearing of his appeal. No rule or award is cited authorizing compensation for time lost in an investigation by the employe investigated.

AWARD

The claim is sustained to the extent of claimant's wage loss during his five days suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1961.