Award No. 5244
Docket No. 5121
2-LV-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. - C. I. O.

(Carmen)

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the discipline assessed against Warren H. Nothstein, carman helper, February 4, 1965, was improperly arrived at and represents unjust treatment within the meaning of Rule 37 of the controlling agreement.

2. That the Carrier accordingly be ordered to rescind the discipline imposed and remove same from his service record.

EMPLOYES' STATEMENT OF FACTS: On September 22, 1964, the claimant received personal injury while on duty at Packerton Shop.

Under date January 26, 1965, the claimant received the following notification:

> "In accordance with Rule 37 of the current agreement between System Federation No. 96 and the Lehigh Valley Railroad you are hereby notified to report for a Hearing and Investigation in connection with your alleged injury sustained by you September 22, 1964 at 8:05 A. M., Packerton Shop.
>
> To determine your responsibility, if any, in this matter. The Hearing and Investigation will be held at 9:00 A. M., Jan. 27, 1965 in the office of the General Foreman, Packerton Shop. Should you desire to have a representative and/or witness present, please arrange for their presence at the above hearing and investigation."

On January 27, 1965, a question and answer statement was taken from the claimant in connection with the above notification.

In letter dated February 4, 1965, the claimant received the following notification from C. C. Treese, Supt. Car Equipment:

> "I have read your hearing and investigation given to R. J. Remaley, General Foreman, on January 27, 1965, at Packerton Car Shop office, which was conducted in connection with your personal injury sustained September 22, 1964 at 8:05 A. M., while on duty at Packerton Car Shop.

The Organization in Award 4792 used the same argument herein made the carrier's position was upheld.

From the above it can be seen there is no merit to the contention of the Employes that the discipline rule was not complied with. If the fact of charging an individual with precise rule violation or responsibility for an incident were to be held as invalidating a disciplinary hearing, it is obvious that no discipline could ever be administered when the rule requires that the employe be notified of the charges against him.

In conclusion Carrier submits there is substantial and convincing evidence in the record to show that claimant was guilty of the matter charged with and that the Carrier did not act arbitrarily or abuse its discretion in reaching that conclusion on the basis of the whole record. The reprimand discipline given was not harsh, arbitrary or excessive. Claimant conceded he had been properly notified of the investigation, he also announced at the hearing that his local chairman would represent him.

It is for these reasons a clear and admitted failure to comply with the safety rule as developed in a hearing and investigation, conducted as required by the current agreement, the resultant discipline which must be viewed as neither unjust nor harsh but which was actually lenient under the circumstances that the carrier respectfully requests that this claim be denied.

Carrier affirmatively asserts that all data used herein has been discussed with or is known by the Employes.

Oral hearing is not desired unless requested by the Employes. (Exhibits not reproduced)

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 waived right of appearance at hearing thereon.

Claimant, an employe since July 13, 1920, was disciplined to the extent of a formal reprimand for violating Safety Rule 4260. Specifically, he was charged with negligence and disregard for his safety when he sustained a compound fracture of his index finger on his right hand on September 22, 1964. He was notified to appear for a hearing and investigation to determine his responsibility for the injury.

A formal hearing was held on January 27, 1965. Claimant was present and he was represented by his Local Chairman.

Employes contend that the notice of investigation did not contain the specific Rule which the Claimant allegedly violated. Thus, he could not defend against the charge that he violated Safety Rule 4260. The notice requested the Claimant to appear "in connection with your alleged injury sustained by you September 22, 1964, at 8:05 A. M., Packerton Shop. To determine your responsibility, if any, in this matter." This is sufficient and adequate notice required in Rule 37. Claimant was advised of the "precise charge" to determine his responsibility, if any, for the injury. It is not necessary to cite each and

every applicable rule. He had every opportunity to present witnesses in his behalf and he was properly and fully represented at the hearing with every opportunity reserved for him and his representative to examine and cross-examine witnesses. He specifically stated that the "hearing and investigation (was) held in a fair and impartial manner and in accordance with schedule agreement." Carrier fully complied with Rule 37.

Claimant was asked at the investigation to tell in his own words just what happened at the time of the injury. He said:

> "We had the Krane with the reservoir on to put it on the car and a 4 x 4 timber, one chain unhooked itself, then I asked Arthur Mertz if he wanted help to roll it in, he said you might as well. Then I reached to help roll it in, the reservoir came down on my hand and where the bolt goes in the bracket that came down and hit me on the knuckle on my finger."

But Mr. Mertz testified that at the time of the injury he "was standing on the outside of the car", that he did not "see the reservoir strike Mr. Nothstein's finger" and that he "had his back turned when it happened."

The reservoir weighed 259 pounds. It was hazardous for any one person to handle it. Yet, the record is clear and convincing that the Claimant proceeded to do so in disregard for his own safety and in violation of Safety Book Rule 4260. A formal reprimand is justified. It was not arbitrary, capricious or unreasonable.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION
ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July, 1967.

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