

Award No. 5677

Docket No. 5558

2-LV-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the discipline to the extent of two (2) days' actual suspension given Harold R. Koch, Carman, July 26 and 27, 1966, 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 compensate the claimant eight (8) hours' wages at the straight-time rate of pay for the respective dates, July 26 and 27, 1966, and his service record cleared accordingly.

EMPLOYES' STATEMENT OF FACTS: Under date of June 30, 1966, the claimant received the following notification from General Foreman R. J. Remaley:

"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 April 7, 1966, to determine your responsibility, if any, in this matter, particularly Safety Rule 4062.

The hearing and investigation will be held Thursday, June 30, 1966, 10:00 A. M., in the office of General Foreman, Packerton Shop.

Should you desire to have a representative and/or witnesses present, please arrange for their presence at the above hearing and investigation.'

On June 30, 1966 a question-and-answer statement was taken from the claimant in connection with the above notification, copy attached as Exhibit A.

4. Carrier was not unreasonable, capricious or arbitrary in assessing two days' actual suspension as discipline in this case.

Carrier submits that no reason has been shown for the Board to set aside the application of discipline in this case and, accordingly, position of the Employees should not be sustained.

(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 employees 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.

This dispute arose as a result of Claimant falling from a scaffold while in the process of placing a steel side plate on a covered hopper car. Another carman, also on the scaffold, was holding the other end of the plate while a Crane Kar was moving the plate into position. As a result of the fall, Claimant sustained a fractured rib. In accordance with Rule 37 of the Agreement, an investigation was held in order to determine the responsibility of the Claimant. This investigation resulted in the finding that Claimant had not complied with Rule 4062 of the Lehigh Valley Railroad Safety Rules of Maintenance of Equipment and Stores Employees. As a result of this finding, Claimant was suspended from service for two days and his record was noted accordingly.

Safety Rule 4062 is:

"Employees working on cars, locomotives or other elevated places shall so stand or sit that they cannot be dislodged by failure of the part on which they are working. When possible, have a secure hold with one hand while working with the other."

The record discloses that the length of the scaffold is in dispute. However, this Board cannot speculate on evidentiary matters that can only be ascertained on the property. Absent any showing that the investigation was handled in an arbitrary or capricious manner, the findings of the investigation must stand.

This Board finds that there is sufficient evidence to uphold the decision of the investigation hearing. On page three (3) of the investigation transcript appears an admission of Claimant that he was not complying with Safety Rule 4062 at the time of his injury. On this same page appears a recitation of ten other injuries and safety rule violations involving this Claimant. Also, the record discloses that another employe was standing on the same scaffold (at the other end) and was not involved in a fall or injury at the time this Claimant was injured. All of these factors constitute probative evidence that this Board must consider.

Therefore, it is concluded that Rule 37 was not violated and that the discipline of two (2) days suspension was not unreasonable. This Claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1969.