



Award Number 5880

Docket Number 5643

2-LV-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the discipline assessed against Carman Peter Poullos to the extent of a reprimand on account personal injury sustained on August 29, 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 rescind the reprimand and remove same from the personal record of Peter Poullos.

EMPLOYEES' STATEMENT OF FACTS: Carman Peter Poullos, hereinafter referred to as the claimant, is employed by the Lehigh Valley Railroad, hereinafter called the Carrier, and is regularly assigned to position of car repairer on the shop track (Suspension Bridge) on the 6:00 A.M. to 2:30 P.M. shift, Monday through Friday.

On August 29, 1966, while working on LV 32845, the claimant sustained an accidental injury to his left leg.

Master Mechanic G. P. Barth, on September 29, 1966, wrote the claimant advising him of a hearing to be held on October 5, 1966.

The hearing was held as scheduled.

Carman R. E. Langevin was working with the claimant at the time of the accident. He, too, was served with a letter from Master Mechanic Barth to appear for hearing. That letter appears on page 1 of that hearing transcript.

Following the hearing, Supt. D. E. Regan wrote the claimant advising that the letter was a reprimand which would be placed on his service record. The Supt. also asserted, without explanation, that the claimant should have used some other method.

Grievance was filed immediately and processed in accordance with the Agreement with all Carrier Officers authorized to handle disputes of this kind, with the result that all Carrier Officers declined to adjust it.

Furthermore, from the standpoint of the facts developed by the Hearings and Investigations in this case, claimant was responsible for personal injury to himself.

There were several other courses of action open to the claimant in the work he was performing. However, he chose to continue to strike the gat with heavy sledge hammer blows, with the result that by the impact the securement in the hole in the top of the end gate was dislodged and the end gate fell striking his leg.

The first alternate course was provided by the Car Foreman in charge who told claimant to "put a wooden brace across it" if he couldn't get it locked. Proper judgment and care on his part would have dictated such action be taken by the claimant before continuing to hammer the end gate without results.

Also, a securement such as a chain or other device applied to hold the end gate in an upright position would have provided a safeguard against the end gate falling, as it did in this case. Such additional safeguard was not considered. (See Carrier's Exhibit "D", Sheet 4, last question on the sheet and answer thereto on Sheet 5, top of sheet.)

Also, claimant testified that "In a case such as this, I now believe that this car should have been spotted at the hoist". This, then, was another alternative to the unsuccessful method used, in this case, to close and lock the end gate.

It is the position of the Carrier that had proper care and judgment been used, this personal injury to claimant would not have occurred.

Carrier submits discipline in this case should not be set aside, but should remain as placed, for the following reasons:

1. Notice of hearing and investigation to the claimant was proper and did not violate the provisions of Rule 37 of the controlling agreement.
2. Hearing and Investigation in this case was properly and fairly conducted without prejudice to the claimant.
3. The discipline applied was not applied in an arbitrary or capricious manner.
4. The discipline applied was not excessive.
5. No basis has been established by the Employees to warrant removal of the discipline by your Board.

All material contained herein was made part of correspondence and/or discussion on the property.

Carrier submits the facts in this case show conclusively the discipline should not be disturbed by your Board.

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.

A review of the record of this discipline case, including the transcript of the formal investigation, establishes (a) that no "precise charge" of rule violation as required by Rule 37 of the Agreement, was made by the Carrier against the Claimant prior to the hearing (investigation), and (b) that the investigation failed to develop credible evidence that the Claimant was either negligent in the performance of his duties on August 29, 1966, or that he failed to observe any safety or operating rule.

Accordingly the claim will be sustained.

A W A R D

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 9th day of April, 1970.