

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

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

- (a) The Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the Carrier, violated Rule 35 of the current working Agreement when Carman John J. Tamayo, hereinafter referred to as the Claimant, was withheld from service for a period of two (2) working days.

This action by the Carrier was unjust, unfair, unreasonable, arbitrary, and capricious, and an abuse of managerial discretion.

- (b) Carrier be ordered to pay Claimant eight (8) hours pay at the pro rata rate for each of the two (2) days he was suspended from service, April 18 and 19, 1972.

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 was injured in the performance of his duties on March 24, 1972 while installing floor stiffeners. A question immediately arose regarding responsibility for the accident. When Claimant responded to a question in the routine personal injury report, he admitted that the accident might have been avoided if he "had been alert to what he was doing".

Employes contend that Claimant was not given adequate notice of the precise charges against him as required by Rule 35. The letter of March 28, 1972, informing Claimant of the formal investigation, reads in relevant part as follows: "The investigation is being held to develop all facts and to determine your responsibility, if any, in connection with the personal injury...." It must be

inferred that the intent of Rule 35 is to be sure that any accused employee would not come to a hearing unprepared to defend himself. A precise and definite charge insures this result, but the real test of sufficient specificity is whether the wording leaves any doubt in Claimant's mind as to what he is being tried for. (Award 19699, First Division, Daugherty). The notice of a formal investigation to develop all facts and responsibility for the injury leaves no doubt that the Claimant was fully apprised of the charge against him.

At the hearing Claimant was found to have violated Rule 17, which reads in relevant part: "Keep hands and feet in a position where material, or equipment cannot fall on or against them". Claimant's admission in answer to Question 14 of the Personal Injury Report, that the accident could have been avoided had he been alert to what he was doing, is reinforced by his responses during the hearing. Claimant admits again that either he and/or his co-worker were careless in handling the floor stiffener. These admissions leave no doubt that the injury could properly have been avoided by due care and that the Claimant failed to observe the safety rules of the Carrier.

Carrier has an obligation to promulgate rules governing the safety of its employees, and also has a right to discipline employees for substantially proven violations of its safety rules (First Division, Award 16409, Daugherty). Two of the purposes of the safety rules and discipline are to prevent injury to the employees, and to emphasize to the Claimant a need to correct his working habits, that he may properly and safely perform his assigned tasks.

Claimant had performed identical tasks for two months, and had previously narrowly avoided an identical injury. He, therefore, was on notice of the inherent dangers of the assigned task, and should have exercised greater care. His admission of a lack of due care is sufficient grounds for the findings of the hearing officer.

The two working day suspension assessed here is not arbitrary or excessive for legitimate management ends of encouraging alertness and care in the safe performance of assigned duties.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of November, 1973.