

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 Willie Johnson, 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.

Employees contend that Claimant was deprived of his rights under Rule 35 by the absence of a precise charge in the letter summoning him to investigation. Said letter stated, in pertinent part:

"This investigation is being held to develop all facts and determine your responsibility, if any, in connection with the personal injury you sustained on March 15, 1972 at approximately 8:45 a.m. in the Steel Car Shop."

It has been well-settled by many awards that a notice of this kind is explicit enough to satisfy the Rule 35 requirement that the employee under investigation "be apprised of the precise charge against him".

The incident which led to imposition of the subject penalty occurred while Claimant was in the process of procuring an "end sheet" for a box car from a stack of material. While doing so, he was struck on the right hand by material falling from this pile, resulting in a personal injury to himself.

We find, from the record, that Carrier acted on substantial and material grounds in concluding that (a) it was or should have been clearly apparent to Claimant that he was dealing with a stack in dangerous disbalance, (b) Claimant's actions in nevertheless attempting to climb it put the stack into further disequilibrium and (c) in view of all this, when Claimant stationed himself beside it for his further efforts, he failed to take reasonable precaution to put himself out of the way of the potential spill which he should have taken into account as a distinct possibility and which resulted in the injury to him.

The penalty is not excessive.

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 17th day of July, 1974.