

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: (System Federation No. 109, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Reading Company

Dispute: Claim of Employees:

- 1- That under the current agreement, Welder George E. Eckert was unjustly dealt with when he was assessed with a sixty (60) actual working day suspension from the Reading Company commencing February 10, 1975.
- 2- That accordingly, Welder George E. Eckert is entitled to be compensated for all lost wages, made whole for all vacation rights, and have this excessive discipline removed from his service record.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, a Welder at the Reading Car Shop, entered the service of Carrier on April 18, 1966.

At Reading Car Shop on November 27, 1974, at approximately 8:30 A.M., Claimant was working on the "B" end of Car BFF #98, burning the center plate and sole plate, which were attached to the center sill with rivets and welds. The center plate and sole plate fell, striking Claimant on the great right toe, fracturing the distal and proximal phalanges of the toe. Claimant was off duty account of the injury from November 27, 1974, until January 16, 1975, when he returned to service.

As a result of the accident, Claimant was notified on January 17, 1975, that he was being charged with failure to follow the instructions of two (2) Assistant Foremen that jacks and bolts must be used when burning down center plates and bottom bolster plates. Such conduct on the part of Claimant allegedly violated Carrier's General Notices A, B, C, D, E, F, G and Carrier's Safety Rules 2, 5, 15, and 59.

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

The testimony of Assistant Foremen Shire and Rieker, Car Repairman Barbitta, Welder Miller, and Claimant himself, make it clear that although instructed to use a jack and bolts when burning down center plates and bottom bolster plates, Claimant did not follow those instructions on the date of his injury, November 27, 1974, and such failure was the direct cause of the accident, and Claimant's personal injury. It is equally clear that Claimant violated the various safety rules set forth in the notice of hearing dated January 17, 1975.

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. 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, so that he may properly and safely perform his assigned tasks.

Claimant performed his work on November 27, 1974, in complete disregard of his own personal safety, and contrary to specific instructions and Carrier's safety rules. Consequently, it is understandable that Carrier considered it to be a serious matter which warranted appropriate discipline. The 60-day suspension assessed here is neither arbitrary nor excessive for legitimate management ends of encouraging care in the safe performance of assigned duties.

Accordingly, we will deny the claim.

A W A R D

Claim denied.

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Award No. 7324
Docket No. 7181
2-RDG-CM-'77

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 12th day of July, 1977.

