

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

Parties to Dispute: { Brotherhood Railway Carmen of the United
States and Canada
{
{ Alton and Southern Railway Company

Dispute: Claim of Employee:

1. That under the current agreement, Carman J. B. Franklin, Jr. was unjustly dismissed from the service of the Alton and Southern Railway Company beginning December 21, 1977 through January 19, 1978 account his alleged violation of General Rule L and Basic Rule 34(a) of the Uniform Code of Safety Rules. His personal record was also assessed.
2. That accordingly, the Alton and Southern Railway Company be ordered to compensate Carman J. B. Franklin, Jr. for all time lost, plus six percent (6%) interest on wages, reinstatement to service with seniority rights, vacation rights and all other benefits that are a condition of employment unimpaired, reimbursement for all losses sustained account loss of coverage under health and welfare and life insurance agreements during the time held out of service and also, remove same 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 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.

At about 12:30 P.M. on November 2, 1977, Mr. Franklin and a co-worker were repairing the decking of a flatcar which was loaded with pipe. The repair was necessary because the pipe had shifted and had to be repositioned and blocked. In the process, the carmen removed old blocks and decking containing nails and threw such material to the ground. After getting off the car, Claimant stepped on a nail protruding from one of the boards or blocks. He received emergency treatment and was off work until December 13, 1977.

Claimant was given timely notice to appear on December 6, 1977, for a formal investigation:

"to develop the facts and place your responsibility, if any, in connection with your throwing blocks or decking from a flatcar onto a walkway with nails protruding where they could create a hazard, and failing to exercise care to avoid injury by stepping on a block or board with a nail in it, resulting in the nail piercing your foot ..."

The investigation was held as scheduled, and by letter dated December 19, 1977, Claimant was notified of his suspension as indicated above for violation of General Rule L and Basic Rule 34 (a) of the Uniform Code of Safety Rules. Such rules read as follows:

"GENERAL RULE L

Constant presence of mind to insure safety to themselves and others is the primary duty of all employes and they must exercise care to avoid injury to themselves and others."

"BASIC RULE 34

EMPLOYEES MUST NOT:

- (a) Leave boards with nails, wire or screws protruding where they may create a hazard."

The Organization urges that the discipline should be set aside because the notice of investigation did not comply with Rule 19 (e) in that it did not apprise Claimant "of the precise charge against him". Petitioner contends that such notice should have specified the rules which Claimant was thought to have violated. Similar arguments were rejected in Awards 7180 and 7560 of this Division, and we affirm such holdings. Apart from consideration of any specific rules, we hold that the instant notice of investigation precisely set forth the charge and fully complied with Rule 19 (e).

We note that Mr. Franklin's claim seeks interest and fringe benefits. Rule 19 (f) allows only "compensation for all regular time lost". Accordingly, we dismiss the claim for interest and fringe benefits.

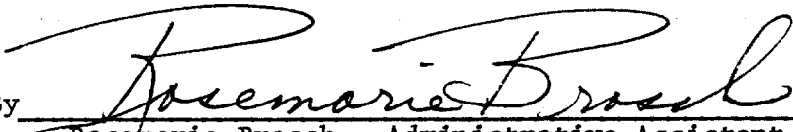
The record reflects that the investigation was fairly and properly conducted, and such record supports Carrier's conclusion that Claimant violated the two cited rules. Insofar as Rule L is concerned, Claimant did not exercise care to avoid injury to himself. As to Rule 34 (a), it is clear that both Mr. Franklin and his fellow worker left boards with nails so that they created a hazard. However, considering all the circumstances, and taking into consideration Claimant's past record, we must conclude that Carrier imposed excessive discipline in this case. Accordingly, we reduce Claimant's suspension to 15 calendar days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of November, 1980.