

No. 1. That Carrier violated the provisions as set forth in the Book of Safety Rules, effective October 1, 1968, GENERAL NOTICE, Sections (A) and (H), and in so doing, flagrantly misused and abused, and directly violated Claimant's contractual rights, when on the date of April 11, 1979, at East St. Louis, Illinois, Carman, Emil R. Pulse, Claimant, in definite concern for his own safety, including life and limb, deemed the work he was performing on the above date to be hazardous and perilous, in view of the unnatural and inclement weather conditions existing, and requested of his Supervisor that he be allowed, temporarily, to discontinue his assignment of working with 220 volt electrical wrenches, such request instantaneously refused, resulting in Carman Pulse being forced to mark off duty for the remainder of his work day and a junior employee allowed, arbitrarily, to perform Claimant's duties, thus violating Claimant's seniority rights, as per the Controlling Agreement.

No. 2. That accordingly, Carrier be ordered to compensate Claimant for all time lost account of this particular incident, specifically four (4) and one-half hours, at the regular carmans rate of pay, and that Carrier be severely reprimanded for their non-compliance to the provisions as per the Book of Safety Rules, effective October 1, 1968.

According to the Organization, the rainstorm with lightning created a hazard imperiling Claimant's safety and welfare because Claimant was operating an electrical wrench. The Organization cites general safety rules to support its contention that Claimant had a right to quit working when he determined, solely on the basis of his personal judgment, that the inclement weather posed a threat to his safety. The Carrier argues that the electrical wrenches had been previously checked several times and were found safe to operate even when exposed to rain. Also, the Carrier asserts that it did not force Claimant to mark off but rather gave him an option to either continue working or to mark off. Claimant elected to go home, and therefore, he must suffer the consequential loss of pay.

As a threshold issue, the Carrier urges us to dismiss the claim since the Organization has purportedly failed to cite any rule on the property to support the claim. However, the Organization on the property, did rely on several safety rules to justify the claim, so we will address the merits.

We note that this is a claim for time rather than an appeal from disciplinary action. Thus, the burden of proof is squarely on the Organization to show Claimant is entitled to be paid for the remainder of his shift. Perhaps Claimant sincerely believed that the working conditions on April 11, 1979 were unsafe due to severe weather conditions but that alone is insufficient to justify his refusal to work. The Organization must also come forward with probative evidence demonstrating, in an objective sense, that the weather posed an imminent threat of substantial harm to his health and safety. Second Division Award No. 8390 (Mikrut); Third Division Awards No. 22641 (Eischen) and No. 22157 (Weiss).

The circumstances in this case indicate that though there was heavy rain, the health and safety of Claimant was not jeopardized. Claimant's fellow employees continued working and the worker who replaced Claimant completed the remainder of his assignment without any problems. The equipment Claimant was using had been tested and certified for use in the rain. The inherent nature of railroad operations often makes it necessary for employees to work in adverse or uncomfortable weather conditions. In this case, Claimant voluntarily chose to quit working for his own comfort instead of performing the remainder of his assignment. Thus, we must deny the claim.

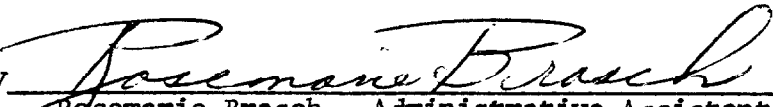
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of May, 1982.