

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Southern Pacific Transportation Company
(Western Lines)

Dispute: Claim of Employees:

1. That under the current agreement Carman Painter R. D. Robles, hereinafter referred to as the claimant, was unjustly deprived of his service rights when he was improperly discharged from service of the Carrier under date of August 22, 1980, after twenty-four (24) years service with the Carrier.
2. That the Carrier be ordered to restore the aforementioned claimant's name to the Los Angeles Car Heavy Maintenance Plant, hereinafter referred to as the LACHMP, Carmen Painters Seniority Roster until such a time as he reaches the retirement age of 65 and that he be granted all the rights and benefits that is presently granted to any employee that is forced to retire on disability.

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 employes 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.

This claim protests the discharge of the Claimant, a Carman Painter with 24 years seniority, and requests that his name be restored to the seniority roster.

The Claimant was seriously injured on December 17, 1979, when he fell from the end of a tri-level freight car while climbing the mesh gate to paint a spot-weld. He did not use the ladder affixed to the car.

The Claimant was dismissed, following an investigation, for violation of Rule "M" of the General Rules and Regulations and Rule 4073 of the Safety Rules Governing Mechanical Department Employees. Rule "M" states, "Carelessness by employes will not be condoned and they must exercise care to avoid injury to themselves...". Rule 4073 states, "When working on cars, step boxes, side or end ladders must be used where needed to provide safe entrance and exit."

The Claimant was present at the hearing but did not testify. He was represented by the Organization, which took the position that the Claimant was justified in climbing on the gate because the proper equipment needed to perform his job safely was not available and because he was worried about the possibility of being furloughed if production were not maintained.

The Carrier disputes the Organization's assertions. What caused the Claimant to fall, argues the Carrier, was his failure to use the ladder on the car, as required by Safety Rule 4073. The dismissal is further justified, it says, by the Claimant's past record, which includes five educational talks regarding safe work practices, two formal disciplinary actions unrelated to work safety and a history of personal injury.

After thorough review of the record, the Board concludes that the Claimant was properly found to have violated the Carrier's Rules and Regulations. There is no basis for the Organization's claim that lack of available equipment was the cause of the Claimant's accident. The Safety Rule specifically states that a ladder must be used when working on a car, and it is undisputed that there was a ladder affixed to the car on which the Claimant was working. No compelling reason has been shown why the Claimant did not use the ladder available on the car rather than climb up the mesh gate. The Claimant was in clear violation of the Carrier's rules.

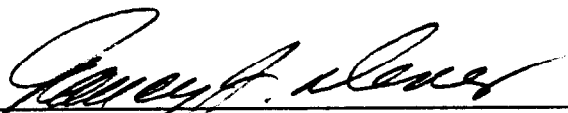
The Claimant's record shows a pattern of careless disregard for his personal safety. In light of his history of 12 personal injuries and numerous educational talks on safe work habits, the Carrier had a reasonable basis for concluding that he could no longer be employed. Accordingly, we find that dismissal was warranted.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1985.