

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

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to remove from the record of Machinist G. Patton the two day suspension for allegedley (sic) violating Safety Rule 4008, in accordance with the provisions of Rule 7-A-1 (e) of the prevailing Agreement effective May 1, 1979.

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 2, 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.

During his tour of duty on May 1, 1983, the Claimant Machinist slipped on oil, while inspecting an engine, causing him to lose five (5) days work. He was given a two (2) day deferred suspension for violating Safety Rule 4008 which provides as follows:

"While walking, look ahead and stay clear of opening or tripping, falling or slipping hazard. If necessary to look away from direction in which moving, stop while doing so."

The record discloses that the Claimant could not remember the engine that he was inspecting on May 1, 1981 when he injured himself. He "thought" he was on "Track 7" at the time but he did not know that there was oil on "Spot 1, Track 7". Asked if he was looking in the direction that he was going, the Claimant replied, "I think I was". He also indicated that he did not remember whether he was "inspecting" as he was "walking".

The Claimant's failure to remember essential details as well as indicating what he thought he did concerning the circumstances surrounding the accident leads to the inference that he was responsible for causing the injury to his back. Accordingly, the Board infers that the Claimant failed to exercise care and diligence in the performance of his duties on May 1, 1983. Put another way, the inference to be drawn from his own testimony, is that he did not comply with the standard of due care and diligence, in looking ahead, while walking and staying "clear of opening or tripping, falling or slipping hazard". Accordingly, he violated Safety Rule 4008.

The accident on May 1, 1983 is not of such a nature that it can be said, in light of past experience, that in all probability it was the result of the negligence by the Carrier. Indeed, given the cause of the Claimant's injury, it could be said to be due to his own actions. In and of itself, the fact of an injury sustained by an employee does not exonerate him from fault or warrant the conclusion that he was at fault. Where an employee fails to exercise care for his own safety while walking, looking ahead and staying clear of an opening or tripping, he violates Safety Rule 4008. In light of the events of May 1, 1983, the Claimant is required to disclose how he sustained his injury. He failed to do so in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

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