

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  
( The Norfolk and Western Railway Company

Dispute: Claim of Employee;

1. That under the terms of the Agreement, Machinist R. A. Groves was unjustly given a ten (10) day deferred suspension on July 3, 1981, by the Norfolk & Western Railway Company.
2. That the Norfolk & Western Railway Company remove the ten (10) day deferred suspension from Machinist R. A. Groves' 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 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.

The Claimant is employed as a Machinist at the Carrier's Diesel Truck Shop in Decatur, Illinois. On April 14, 1981 he reported to his Foreman that he had hurt his back sometime between noon and 12:30 p.m. while climbing down from a locomotive truck that he had worked on. He said that while dismounting from the truck his foot slipped from a crossmember because of oil on his shoe and on the crossmember, causing him to fall to the ground. The Claimant fell approximately 2 to 2 1/2 feet, landing on his feet but experiencing pain in his back. At his request, he was taken to the hospital.

The Claimant was charged by the Carrier with violation of Safety Rule 1073 and General Notice H which, in relevant part, provides as follows:

Safety Rule 1073

"When getting on or off equipment, employees must face the equipment, and have secure hand hold and footing \*\*\*."

General Notice H states:

"Employees who commit unsafe acts which jeopardize the personal safety of themselves and others will be subject to discipline, even if their conduct violates no specific rule".

After an investigation was held, the Claimant was assessed 10 days deferred suspension.

There were no witnesses who observed the Claimant getting off the truck frame; nor did anyone know that he was injured at the time. These considerations do not reasonably warrant any adverse inference against the Claimant.

It is undisputed that it is part of a Machinist's normal duties to climb on and off truck frames. On this particular occasion the Claimant indicated that he was on top of the truck "and turned around to get off \*\*\* and get down and my foot slipped because of the grease and oil and stuff on it and I hit the floor \*\*\*". It should be underscored that conditions in the Shop on April 14, 1981 were not normal. On Friday, April 10 the Shop was flooded and "standing water" still remained in the truck area of the Shop on April 14. The record indicates that there were water puddles in the Shop and various spots on the floor were "oily". Thus, the inference to be drawn is that the conditions of the Shop might have been responsible for the Claimant falling from the truck frame.

The record discloses that in his 17 years of employment with the Carrier, the Claimant sustained a number of lost time injuries. However, there is no functional relationship between the Claimant's record and the accident which occurred on April 14, 1981. Nor does the Claimant's record warrant the inference that he failed to exercise due care and diligence in dismounting from the truck frame.

Viewing the record in its entirety, the Board concludes that the Carrier failed to satisfy the burden of proving that the Claimant was at fault in failing to have a secure footing when he climbed off the truck frame on April 14, 1981. To conclude that the Claimant committed a violation of Safety Rule 1073 and General Notice H would be no more than a guess, given the proof submitted by the Carrier.

A W A R D

Claim sustained.

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.