Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10429
Docket No. 10292
2-N&W-MA-'85

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
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That the Carrier improperly suspended Machinist D. L. Blount from service on October 7, 1981 as a result of investigation held on September 29, 1981.

2. That he be compensated in the amount of eight (8) hours at the pro rata rate for each day of his work assignment beginning on the date of October 7, 1981, with 10% annual interest.

3. And further, that he be restored to service with all rights unimpaired, health and welfare restored and paid for during the time he is held out of service and all seniority and vacation rights restored as if he had continued in the employment of the Norfolk & Western Railway Company.

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 has been employed by the Carrier as a Machinist in its foundry located at Roanoke, Virginia, since April 12, 1971. As a result of an investigation held on September 29, 1981 in which he was charged with violation of Safety Rule General Notice D, the Claimant was dismissed from service because of an injury he sustained on August 11, 1981 and his persistence in following unsafe work practices. Safety Rule General Notice D provides as follows:

> "The service demands the efficient, intelligent and safe discharge of duty. It is the duty of all employees to exercise care to avoid injury to themselves and others."

On August 11, 1981, the Claimant injured a finger on his right hand while performing the task of straightening several gauge rods lying on a pallet. Although he reported his injury to Supervisor Austin on August 11, the Claimant believed that the injury did not warrant medical attention. A formal report of the injury was submitted by the Claimant on August 21, when he requested medical attention. Due to the injury, the Claimant lost time from work.

The record discloses that there is at least 1 1/2 inches clearance between the rods positioned on the pallet. Thus if the Claimant grasped the rods as he said he did on August 11, he could not have caught his finger between the rod he handled and the rod that had been placed on the pallet.

The Board's conclusion with regard to the Claimant's conduct on August 11 is intertwined with the second aspect of the Carrier's charge, namely, that since his date of hire, the Claimant has persisted in following unsafe practices. After roughly 10 years of service (through August 11, 1981) the record discloses that the Claimant sustained 7 injuries, 6 of which occurred since 1976. It should be noted that any injury suffered by the Claimant after August 11, 1981 is not relevant to the instant case. A random sampling of 20 machinists, who averaged 15.7 years of service show average yearly injuries which are substantially less than the average yearly injuries of the Claimant.

In 1979, the Claimant was counseled "concerning violation of Rule 1041" and "there was a supervisor's review" made of his "safety record". Such counseling and review of the Claimant's safety record do not rise to the level of discipline which is sufficient to indicate to the Claimant that if his conduct did not change, he would be dismissed from service. In other words, the Carrier did not apply the principle of corrective discipline to the Claimant. This principle requires that the employer withhold the final penalty of dismissal from errant employees until it has been established that the employee is not likely to respond favorably to a lesser penalty.

Furthermore, in reviewing the Claimant's entire record, the Board cannot conclude that his performance "represents a pattern of unreasonable risk to its operations, its personnel and to the Claimant, if it were to continue the Claimant in its employ." See Public Law Board No. 550, Award No. 100. At the same time, it must be underscored that the Claimant's conduct on August 11, 1981, along with his accident frequency cannot be minimized. It seems clear that the Carrier has a responsibility to the employees, to the general public and to itself to guard against unnecessary hazards and risks. The record of the Claimant's injuries is more than sufficient to demonstrate that the Claimant has been negligent in the performance of his work. The Board believes that the Claimant needs "a more pointed warning than his injuries seemed to have given him". See Second Division Award No. 5205. The penalty imposed by the Carrier is believed excessive, and it is the Board's judgment that the Claimant be reinstated without back pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1985