

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
( Seaboard System Railroad

Dispute: Claim of Employes:

1. That the Seaboard System Railroad (formerly Seaboard Coast Line) violated the January 1, 1968 Agreement, particularly Rule 32 but not limited thereto, between the Carrier and the International Association of Machinists & Aerospace Workers when it unjustly suspended Machinist R. L. Crook from service for five working days beginning July 25 through 29, 1983, account alleged violation of Company Safety Rules.
2. That, accordingly, Carrier be ordered to compensate Machinist Crook in amount of five days pay at the pro rata rate and make claimant whole for any other pay or benefits lost as result of his suspension from the service.

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, R. L. Crook, a Machinist with the Carrier, in service since January 25, 1980, was given a 5 day actual suspension resulting from an investigation on July 14, 1983.

The Claimant is charged with violating the Carrier's Safety Rules 15 and 644, which state: 15... "when on duty, they must avoid distraction and keep their minds on their work." 644... "every precaution must be taken against load swaying or turning." On July 1, 1983 the Claimant was operating a crane and, while moving the crane with his back turned to the trucks, the Claimant caused a 600 pound load to strike him resulting in injuries to the Claimant.

The Organization argued that the Carrier did not conduct a fair hearing as required in Rule 32 and stated that the Claimant did exercise due care but missed two small links of chain that were hooked to the jacket under water. It was noted that, because these chains were under water, they were difficult to see. The Organization also noted the reason that the Claimant had his back turned to the crane he was operating was to look for the other crane which operates on the same set of tracks. In any event the Organization states that the penalty was too severe, and that this is an example of excessive discipline, and the suspension and reprimand should be removed from the employee's record.

The Carrier argues it has the right to establish reasonable safety rules to govern its operations, and that employees who violate those rules should be subject to discipline. This accident was caused by negligence on the part of the employee. The Claimant either knew or should have known that turning his back to a crane while he is lifting is a violation of safety rules, and just because he was hurt does not absolve him from discipline in this matter. The Carrier notes that industrial accidents cost Carriers substantial amounts of money not to mention the pain and suffering on the part of their employees. The Carrier also argued that just because another employee may have been negligent, this does not excuse the negligence of the Claimant. This is not a minor matter. It is very serious, and the 5 day actual suspension was appropriate in this case.

Upon careful review of the record in this case, the Board finds the investigation conducted by the Carrier was fair and impartial as required in Rule 32 of the Labor Agreement. The Carrier has the right to establish reasonable safety rules, and certainly this Carrier takes its obligation seriously, because it has established 879 separate safety rules in its safety book. Even though the Claimant in this case did not act with malicious intent, this was a clear case of negligence. Employees are responsible for their actions, or in this case inactions. The Board finds this is a very serious infraction, which could have resulted in much more serious injury to the Claimant or to another employee. However, there were some mitigating circumstances in this case. The hooks were under water and difficult to see. Obviously, another employee had not disengaged the unit as should have been properly done. The Claimant was exercising some caution by looking for the other crane that was on the same track. Obviously, the proper way to handle this situation would be to check the load thoroughly and perform the lifting operation prior to moving the crane from its position. Because of the foregoing, the Board will reduce the penalty to a final warning and order the Carrier to remove the 5 day suspension from the record. The Board would strongly warn employees to exercise due care, particularly when operating equipment such as a large crane.

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2-SSR-MA-'85

A W A R D

*Claim sustained in accordance with the Findings.*

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Devor - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1985