

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(International Association of Machinists and Aerospace
Workers)

Parties to Dispute: (

(Union Pacific Railroad Company)

Dispute: Claim of Employees:

1. That the Carrier violated the Controlling Agreement, Rule 37 when it placed a thirty (30) day deferred suspension on Machinist Helper T. J. Coletti's (hereinafter referred to as Claimant) personal record.

2. That, accordingly, the Carrier be ordered to remove the thirty (30) day deferred suspension from Claimant's personal 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.

On April 13, 1983, an investigation was held on charges that the Claimant failed to safely perform his duties in connection with on-the-job personal injuries that occurred on April 13, 1979; April 30, 1982; and April 2, 1983. Specifically, the Claimant was charged with violating the Carrier's Rules B and M, General Regulation 700, and General Safety Instruction 4001 of Form 7908, which read as follows:

"B. Employees must be conversant with and obey the rules and special instructions. If in doubt as to their meaning, they must apply to proper authority of the railroad for an explanation.

M. Employees must exercise care to prevent injury to themselves or others.

Employees must inform themselves as to the location of structures or obstructions where clearances are close and must take necessary precautions to avoid injury at such locations.

Employees must expect the movement of trains, engines, cars or other moving equipment on any track, at any time, in either direction.

Employees must not stand on the track in front of an approaching engine, car or other moving equipment for the purpose of boarding same.

Train and engine service employees must not occupy the roof of any freight car or caboose under any circumstances. Other employees whose duties require them to occupy the roof of a car or caboose may do so only when equipment is standing.

700. Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of goodwill, or who do not meet their personal obligations.

4001. Employees must take every precaution to prevent injury to themselves and other persons under conditions not provided for by the rules.

Employees must not rely upon the carefulness of others, but must protect themselves when their own safety is affected."

After the hearing, the Claimant received a 30-day deferred suspension for the violation. The Organization subsequently filed this Claim on the Claimant's behalf.

The Organization contends that the Carrier did not prove that the Claimant violated the Rules governing work safety. The Carrier's witnesses at the Hearing did not witness any of the injuries; their testimony, therefore, was both speculative and hearsay. The admission of this hearsay testimony during the investigation was an error that prejudiced the Claimant's right to a fair and impartial hearing.

The Organization further asserts that the doctrine of laches estops the Carrier from including the April 1979 and April 1982 injuries in the charges against the Claimant.

The Organization therefore contends that the Claim should be allowed in its entirety; the Carrier should be ordered to remove the 30-day deferred suspension from the Claimant's record.

The Carrier contends that the Claimant received a fair hearing as provided by Rule 37 of the Controlling Agreement. During the investigation, the Organization did not object to the introduction of injury report forms covering the Claimant's April 1979 and April 1982 injuries; also, the Claimant was disciplined only for his actions relating to the April 1983 injury. In addition, the testimony of the Carrier's witnesses was essential even though these witnesses did not see the injuries occur; they testified about the Claimant's reporting of his injuries, and the Rules violations based on those reports.

The Carrier further asserts that the record establishes that the Claimant was guilty of violating the Rules governing employee safety in connection with his April 1983 injury and that the Claimant was careless and failed to take precautions to prevent injury. At the investigation, the Claimant admitted he could have been more careful in performing the actions that led to his injury. The Carrier asserts that based on the record, the 30-day deferred suspension was proper.

The Carrier therefore contends that there is no doubt that the Claimant violated Employee Safety Rules, that the discipline was justified, and that the Claim should be denied in its entirety.

This Board has reviewed all of the evidence and testimony in the record, and it finds that the Hearing in this case was fair, and the Claimant was guaranteed all of the procedural rights to which he is entitled.

Moreover, this Board finds that there is substantial evidence in the record to support the finding that the Claimant was guilty of violating the Safety Rules in April 1983 when he injured his finger on the job. There is sufficient evidence that the Claimant acted negligently while he was working and, furthermore, that he admitted he could have been more careful in performing his duties. Hence, the Carrier had sufficient evidence of wrongdoing on the part of the Claimant to impose discipline on him.

Once this Board has determined that a Carrier had sufficient evidence to issue discipline, we must then turn our attention to the type of discipline imposed by the Carrier. It is fundamental that this Board will not second-guess a Carrier on disciplinary matters unless the action taken by the Carrier was unreasonable, arbitrary, or capricious. In the case at hand, there is no evidence of wilfulness in the record. The Claimant was careless and negligent, but not intentional or wilful in the action that led to his injury. Even the Carrier's witnesses admitted that the Claimant is a safe worker. Hence, a 30-day deferred suspension is much too severe under the circumstances of this case. The Claimant had previously been orally warned with respect to the safety of his work performance. Hence, the next disciplinary action that the Claimant deserved after a negligent action on his part was, at most, a written warning. A 30-day deferred suspension under the facts and circumstances of this case was an unreasonable and arbitrary penalty and cannot be allowed to stand.


This Board hereby reduces the 30-day deferred suspension to a written warning and orders that the Claimant be made whole for any lost pay as a result of the excessive discipline.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1986.