

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That the Missouri-Kansas-Texas Railroad Company violated the agreement between the Missouri-Kansas-Texas Railroad Company and the Brotherhood Railway Carmen of the United States and Canada, effective January 1, 1957, as amended, and the Railway Labor Act, as amended, when Carman W. E. Eastwood was assessed a formal reprimand as the result of an investigation held February 21, 1985.

2. That the Missouri-Kansas-Texas Railroad be required to remove all reference to this reprimand from the personal record of Carman W. E. Eastwood and all reference thereto be obliterated from his 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.

Claimant is a Carman - Welder with a service date of May 17, 1984. As a result of charges dated February 4, 1985, Hearing held on February 21, 1985, and by letter dated February 22, 1985, Claimant was assessed a formal reprimand for violation of Safety Rule L on January 9, 1985.

On January 9, 1985, Claimant was guiding a set of trucks onto a rail. As Claimant was pushing on the truck to guide it on the rail, Claimant's hand slipped and Claimant sustained an injury to his finger. According to Claimant, it was necessary for his hand to be in that particular position and he was watching the wheels set on the rail in a straight fashion. Claimant testified that he did not know why his hand slipped.

The Organization first argues that the charge is vague and imprecise. In pertinent part, the charge required Claimant to appear for Hearing:

"To develop the facts and determine your responsibility, if any, in connection with your injury on or about 3:00 p.m., January 9, 1985. . . . [Y]ou will be charged with violating Uniform Code of Safety Rules effective January 1, 1971, General Rule L. 'Constant presence of mind to insure safety to themselves and others is the primary duty of all employees and they must exercise care to avoid injury to themselves. . . .'"

Our reading of the charge satisfies us that it was sufficiently precise within the meaning of Rule 26 so as to put Claimant on notice of the allegations against him and to permit Claimant adequate opportunity to prepare a defense to those allegations.

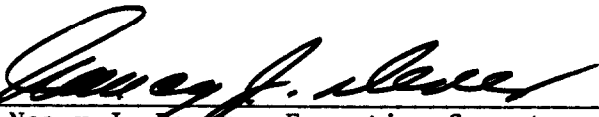
The Organization also asserts that the Hearing was unfair. We have carefully reviewed the record and find nothing to support that argument.

With respect to the merits, we agree with the Organization that the Carrier has not sustained its burden of showing by substantial evidence that Claimant acted in a fashion violative of Rule L. The Carrier has pointed to nothing in the record to demonstrate that Claimant failed to exercise care to avoid injury to himself, was careless of his own safety or failed to properly protect himself. The Carrier's argument amounts to speculation that Claimant did not follow the requirements of Rule L by virtue of the fact that he was injured. However, such speculation is insufficient to meet the burden placed upon the Carrier. See Second Division Award 10608. On balance, we believe that the Carrier has not sustained its burden. We shall therefore require that the reprimand be expunged from Claimant's record. Violation of the Railway Labor Act is not properly addressed in this Forum.

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 21st day of October 1987.