

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(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 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 Carmen K. E. Austin was assessed a formal reprimand to his personal record as the result of an investigation held on the date of April 4, 1985.

2. That the reprimand be removed from the personal record of Carman K. E. Austin and all reference thereto be obliterated from his personal records.

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 with a service date of January 8, 1974. As a result of charges dated March 13, 1985, Hearing held on April 4, 1985, and by letter dated April 9, 1985, Claimant was assessed a formal reprimand for violation of certain Safety Rules on February 25, 1985.

On February 25, 1985, Claimant and another employee were loading wrecker blocks onto a truck under the direction of a Foreman. Claimant was loading the blocks by lifting them above his head and onto the side board so that another Carman could stack the blocks on the truck. According to Claimant, a block slipped out of his hand or hit the side board and struck him in the face causing lacerations to Claimant's upper lip and nose. Claimant

testified that he was performing his duties of loading the wrecker blocks in the ordinary and usual manner for performing that work. According to Claimant, this was his first accident during his 11 years of service. The Foreman and the other Carman (although not seeing the incident at the precise time it occurred) also testified that the procedure used on February 25, 1985 was common practice and was conducted in the ordinary and usual manner.

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

"to develop the facts and determine your responsibility, if any, in connection with your injury on or about 8:30 a.m., February 25, 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 ... is the primary duty of all employees and they must exercise care to avoid injury to themselves ..., Rule N. Employees must not be: 1. Careless of the safety of themselves ... and Basic Rule 1.(a) Protection of yourself."

Our reading of the charges satisfies us that they were 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. We note that at the close of the Hearing, the parties indicated that no further witnesses were desired.

The Organization also asserts that the Hearing Officer improperly asked Claimant certain questions indicating a lack of objectivity by the Hearing Officer. Our review of the record satisfies us that the Hearing Officer's questions were designed to ascertain the facts and make a complete record and we find no improper conduct by the Hearing Officer.

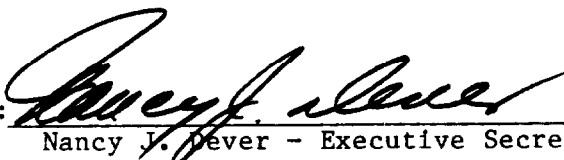
With respect to the merits, we agree with the Organization that the Carrier has not sustained its burden of showing by substantial evidence that the Claimant acted in a fashion tantamount to negligence or the failure to exercise reasonable care. The procedure utilized on that day was the ordinary and customary practice and Claimant followed that procedure. The Carrier has pointed to nothing in the record to demonstrate Claimant's culpability or his failure to follow the requirements of the cited Rules. The Carrier speculates that Claimant was negligent by virtue of the fact that he was injured. However, speculation is insufficient to meet the burden placed upon the Carrier. See Second Division Award 10608. We shall therefore require that the reprimand be expunged from Claimant's record.

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 28th day of October 1987.