

The Second Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

1. That under the current and controlling agreement, Service Attendant W. E. Wiggins was unjustly suspended from service of the Seaboard System Railroad on November 13, 1985, after a formal investigation was held on November 6, 1985, by Asst. Master Mechanic, Mr. F. L. Miracle.

2. That accordingly, Service Attendant W. E. Wiggins be compensated for the days of November 13, 1985 through November 17, 1985, both dates inclusive, and the payment of 10% interest rate be added thereto.

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 employees 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 is employed by the Carrier as a Service Attendant. In the course of performing his duties on October 28, 1985, Claimant fell from the steps of a caboose and incurred an injury to his right knee. Subsequently, the Claimant was charged with violation of several Safety Rules and assessed a suspension of five (5) days.

Based upon Claimant's testimony, the cause of his injury was that he intentionally stepped on a scrap crosstie while attempting to mount a caboose:

"...I started to enter the rear of the caboose and stepped on piece of tie in question..."

* * *

"...I stepped on wood, started to get on caboose and slipped and hit my knee."

Injury in itself does not constitute a Safety Rule violation, however, it is evident from Claimant's testimony that he acted in an unsafe manner. There is no speculation as to the cause of the injury. The Claimant stepped on a loose crosstie. The Claimant knew the safety risks of such an action. Approximately two months earlier (September 2, 1985), Claimant suffered a foot injury by stepping on a loose tie. He was placed on restricted duty for 26 days. One month to the day after he came off restricted duty, he fell again as a result of stepping on a loose tie.

Given the circumstances of Claimant's second foot injury, the five (5) day suspension is not excessive. There is no evidence that the Carrier acted in a discriminatory, unreasonable, capricious or arbitrary manner. This Board has no basis for setting aside or modifying the suspension assigned by the Carrier.

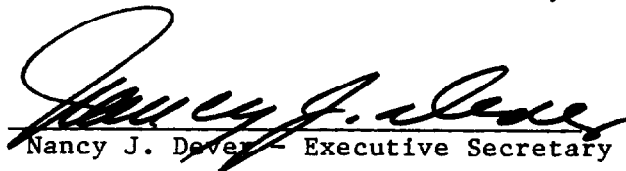
The Claimant was afforded a fair and impartial investigation.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 6th day of July 1988.