

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
(
(CSX Transportation, Inc. (Chesapeake and Ohio
(Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "Carrier") violated Rules 37 and 47 of the Shop Crafts Agreement between Transportation Communications International Union -- Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 11, 1969) on August 18, 1989, when it assessed a ten (10) day overhead suspension and a probationary period to last until December 31, 1989 to Carman Ronald Frazier (hereinafter "claimant") for alleged violation of CSX Safety Rule 10.

2. That the Carrier violated the service rights of the claimant by failing to provide a fair hearing and procedural due process requirements of Rule 37 of the Shop Crafts Agreement by failing to provide a fair and impartial hearing as provided for under Agreement Rule 37 by capriciously and arbitrarily assessing discipline against the claimant in further violation of Rule 38.

3. That accordingly, the Carrier be order to clear the record of the claimant, the claimant be exonerated from all charges and the letter of reprimand be expunged from the claimant's personal file.

FINDINGS:

The Third 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 was given a 10 day overhead suspension as a result of an Investigation held on August 4, 1989. In addition the Claimant was put on probation until December 31, 1989, for the alleged violation of Carrier Safety Rule 10. On June 1, 1989, the Claimant tripped on a 3' x 3' quarter inch thick piece of sheetmetal which had been used to patch a hole on the Carrier's northern footbridge at its Raceland Car Shops.

The Organization stated that the Carrier violated Rule 37 of the Agreement in that it did not provide a fair and impartial Hearing to the Claimant on August 4, 1989. The injury date on the documents leading to the Investigation were incorrect. Therefore, the Carrier's facts were not exact which makes the Investigation defective. In addition the Carrier did not talk to the Claimant after his injury and, therefore, had not collected all of the facts regarding the circumstances. The Organization also claimed that the conducting officer made attempts to enter testimony into the transcript which is an example of the biased nature of the Investigation.

Regarding the merits of the case the Organization stated that the Claimant had been using this particular bridge for the past 30 years and had no knowledge of the patch. The piece of metal extended from the edge of the bridge to the middle of the bridge and there was no warning as to its existence. Yet the Carrier tends to shift the blame from itself to the Claimant. The Organization noted that after the Claimant sustained his injury, the Carrier then wasted no time making the proper repair to the bridge that should have been done in the first place. The Organization asked that its Claim be upheld in full.

The Carrier stated that on June 1, 1989, the Claimant was late in reporting for his 7:00 A.M. assignment and at approximately 7:15 A.M., while crossing the northern footbridge, the Claimant tripped on a sheetmetal patch placed to cover a hole that had been burned in the bridge timbers. There were no witnesses to this incident. The Claimant worked for awhile but then stated that his arm began to swell. He reported to the Carrier's nurse and was sent to the hospital where it was determined that he had torn some ligaments in his arm. The Carrier, while completing the report, did enter the wrong date but this was merely a mistake. The original Investigation was postponed from June 21, 1989, by mutual agreement to August 4, 1989. The Carrier stated that the Claimant was afforded a fair and impartial Investigation. There were no objections to the charges at the Hearing, and the discrepancy in the date was cleared up to everyone's satisfaction at the Hearing. The Claimant knew exactly which injury was being investigated and his Representative was prepared and ready to proceed with the Investigation at that time. The Carrier argued that it did not violate Rule 47(d) in that the temporary repairs made to the bridge fulfilled any obligation the Carrier had in this regard. The Carrier is not obligated to immediately repair every item or object employees may come in contact with during the course of their employment. The temporary repair was adequate and was not hazardous in that literally hundreds of employees crossed over the footbridge while the temporary repairs were in place without suffering any injury. It is not the Carrier's temporary repair that caused this accident. It was the inattention of the Claimant in not watching where

he was walking so that he would avoid tripping over the 3 foot wide steel plate. It is the Carrier's position that the Claimant was guilty of violating Rule 10 of the Carrier's Safety Code and that a 10 day overhead suspension and probation was a most lenient disciplinary action under the Carrier's policy of progressive discipline and was entirely justified and cannot be construed as excessive. The Carrier asked that the Claim be denied in full.

The Board finds that the Carrier conducted a fair and impartial Investigation, at least to the minimum requirements of Rule 37 of the Agreement. The wrong date on the issuing documents was not a mistake that would prejudice in any way the Organization's ability to fairly represent this Claimant. He knew full well the date on which the accident occurred and which accident was the subject of the Investigation. With respect to the Organization's contention of the bias of the Hearing Officer, the Hearing Officer did somewhat overstep his bounds; however, the Hearing taken as a whole did sufficiently protect the rights of the Claimant as called for in Rule 37. Regarding the merits of the case, this is, in the Board's opinion, a different set of circumstances. The photos provided to the Board show that for a very small, perhaps 6" x 2" or 3", hole that was located at the far side of the footbridge the Carrier chose to put in place a large 3 x 3 foot quarter inch thick steel plate. There were no warning flags or signs of any kind and just because a number of other employees traversed the bridge without any ill effects, does not mean that this patch did not constitute a safety hazard. In fact, from the view of this bridge, the patch was more of a safety hazard than the hole. Therefore, the Board finds that the Carrier's chosen method of temporarily repairing this footbridge, at the very least, contributed to the accident which occurred on June 1, 1989. Therefore, the Board will order that the Carrier remove the 10 day overhead suspension, probationary period, and letter of reprimand from the Claimant's personnel file in accordance with the Claim. Claim #2 is specifically denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Meyer - Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1991.