

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12322
Docket No. 12287
92-2-91-2-134

The Second Division consisted of the regular members and in addition Referee Nancy Connolly Fibish when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(
(Illinois Central Railroad

STATEMENT OF CLAIM:

That the Illinois Central Railroad violated the current and controlling Agreement between the International Association of Machinists and Illinois Central Railroad dated April 1, 1935, as subsequently revised and amended, when it harshly and unjustly assessed Machinist Asim Fadil Dawud 10 working days suspension account he allegedly violated General Safety Rules A and F; and Safety Rules No. 55, 56, 57 (b, c, d and h), which resulted in his straining a muscle in his back.

That the Illinois Central Railroad make Machinist Dawud whole for any and all losses incurred as a result of the investigation conducted on October 31, 1990, and his subsequent 10 working days suspension and clear his service record of all reference to the incident.

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 September 27, 1990, Claimant attempted to lift a governor out of its packing crate while working on the afternoon shift at the Woodcrest Shop. The governor weighed about 100 pounds and was resting on a wooden pallet. In the course of lifting the governor, the boards on the pallet on which he was standing cracked and the Claimant lost his balance and sustained an injury to his back.

On October 8, 1990, the Carrier notified the Claimant to attend an Investigation set for October 17, 1990, to determine:

"Whether or not on September 27, 1990, you were in violation of General Safety Rules A and F, and Safety Rules #55, 56, 57 (b, c, d, and h), which resulted in your straining a muscle in your back. The Safety Rules read as follows:

GENERAL RULES

- A. Safety is of the first importance in the discharge of duty.
- F. Employees must:
 - Exercise care and judgment to avoid risk of injuries.
 - Take time to work safely.
 - Exercise care to prevent injury to themselves and others.
 - Report to those in authority any dangerous condition or unsafe practice where such is found to exist.
- 55. Lifting beyond normal physical capabilities is prohibited. Avoid jerking or twisting and, if necessary, obtain help to handle heavy or cumbersome objects.
- 56. Before handling material or object, place hands and feet in proper position so they will be safe from falling or rolling material and equipment, adopt a stance which will permit lifting the object as nearly straight up as possible.
- 57. When lifting:
 - (b) Have secure footing.
 - (c) Do not lift while bending over at the waist.
 - (d) Bend the knees and keep the back nearly vertical.
 - (h) Heavy work should be done with mechanical equipment where available; otherwise, with the assistance of fellow workers."

At the request of the Organization, the Hearing was postponed until October 31, 1990. On November 13, 1990, the Carrier assessed the Claimant a ten-day suspension, from November 13, to 27, 1990, finding him guilty of violating the above-cited Rules and indicating that the measure of discipline assessed him was determined in part by his past personal record. The Organization filed an appeal on November 21, 1990. After subsequent appeal on the property up to and including the highest officer of the Carrier designated to handle such appeal, the matter was progressed to the Board and docketed before the Second Division for final adjudication.

The Organization's position is that the Carrier failed to sustain its charges against the Claimant and that the Carrier assessed unjust and harsh discipline. The Organization further claims that the Claimant performed this particular work assignment in the customary manner historically practiced at the Woodcrest Shop, that is, "without assistance and without incident." It states that the responsibility for the accident lies with the Carrier for using an inferior quality of pallet to transport heavy equipment in the shop. The Organization further claims harassment in that a number of other employees at the facility had sustained on-the-job injuries during the six months before the date of this incident and that none of them had been called in for a formal investigation. The Organization requests that the suspension be expunged from his record and that the Claimant be made whole for the ten working days he was suspended and for any and all losses incurred as a result of the October 31 investigation.

The Carrier's position is that the Claimant was guilty of violation of the cited Safety Rules and that the discipline assessed was warranted. It states that the issue in this case is whether the Claimant exercised proper judgment and adhered to Safety Rules when, while standing on a pallet, he attempted to lift the governor out of its packing case. The Carrier contends that it was the combination of the Claimant's body weight of 225 pounds, plus the 100-pound weight of the governor, placed on a 41 inch by 3 inch pallet of 3/8 of an inch in thickness that caused the pallet boards on which he was standing to crack and caused the accident. With respect to the severity of the assessed discipline that is claimed by the Organization, the Carrier states that it took the Claimant's past record into account, including thirteen previous on-duty injuries, four suspensions, and two dismissals (later reduced to suspensions) when assessing the discipline in this case.

The Board has reviewed the entire file, including the transcript of the Hearing and the Awards cited by both parties in support of their positions. While the Organization asserts that the Claimant asked for help of a fellow employee and that he asked his Foreman for an eye bolt (which could be inserted on the governor and hooked up to an overhead crane), the Claimant's Foreman testified that the Claimant neither asked for assistance nor for an eye bolt. The Organization states that the Claimant had requested assistance from a fellow employee but, due to limited space, removed the container by himself. With respect to the conflicting evidence in the record of the Hearing, this Board is well aware that it should not make determinations on conflicting evidence, and that is a precept well accepted by the parties. With respect to the assertion of harassment, although the record shows that accidents involving other employees during a 6-month period did not result in formal investigations, this by itself is insufficient to show harassment. It was testified at the Hearing that the accidents were nonetheless investigated and it had been determined that formal investigations were unwarranted. With respect to the central issue in this case, i.e., did the employee violate the specific Safety Rules cited in the charge, particularly Rule 55, which dictates that employees "obtain help to handle heavy or cumbersome objects," and Rule 57, which directs that, when lifting, employees should "have secure footing" and "heavy work should be done with mechanical equipment where available;

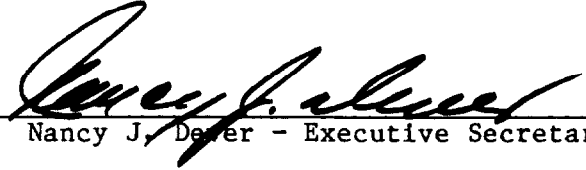
otherwise, with the assistance of fellow workers, "this Board finds that the Carrier adduced sufficient probative evidence that this employee violated these Rules. Nor do we find the discipline excessive, given the Claimant's previous record. The Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1992.