Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12325
SECOND DIVISION Docket No. 12301
92-2-91-2-88

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
(
(CSX Transportation, Inc. (former Baltimore and
(and Ohio Railroad Company)

STATEMENT OF CLAIM:

1. That, in violation of the current agreement, CSXT (former Baltimore & Ohio Railroad Company), arbitrarily disciplined Machinist R. W. Browning by unjustly assessing a five (5) day actual suspension. The suspension will take effect after the Claimant is released by his physician.

2. That, accordingly, CSXT, be ordered to compensate Machinist R. W. Browning five (5) days' pay at the pro-rata rate of pay as of September 4, 1990, and that his record be cleared immediately.

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 has been employed as a Machinist at the Cumberland, Maryland, diesel locomotive repair facilities. On March 9, 1990, he was directed by his Supervisor to remove a water pump that weighed approximately 110 pounds from Locomotive 8363. In the performance of this operation, without the use of a chain, strap or other tool, he slipped in oil which was on the surface of the locomotive's running board, fell, and sustained a back injury. On March 12 Carrier directed him to appear at an Investigation on March 21, 1990. Due to Claimant's physical incapacity following the injury, the Hearing was rescheduled and held on August 21, 1990.

On September 4 the Carrier found Claimant responsible for his injury, based on the fact that he failed to wait for assistance from his Supervisor in removing the water pump, and he was assessed five days' actual suspension to be imposed after he was released by his physician for return to duty, but served before his return. Following the Organization's appeal on September 19, 1991, to the facility's General Plant Manager and subsequent appeal on the property up to and including the Carrier's highest designated officer, the case was docketed before the Board for final adjudication.

The Organization's position can be summarized as follows:

(1) The Carrier did not charge the Claimant with any specific Rule violation or Safety Rule violations, citing Rule 32 in support of this point.

Rule 32 reads in part:

> "At a reasonable time prior to the hearing, such employe and the duly authorized committee will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses."

(2) The Carrier did not meet the burden of proof to sustain the charge and justify the discipline assessed."

The Organization asserts that the Carrier did not provide a safe place and safe tools for its employees; that, in fact, the proper tools (one-foot chains) for removing water pumps had been taken from the Machinists in early March 1990, and not replaced; that a lifting device for removing and applying oil and water pumps was not provided until after the Claimant's accident; that in reaching its decision the Carrier did not consider the testimony of either Claimant's Supervisor or four Machinists that supported Claimant's testimony on pertinent facts; that the Carrier had exercised its discretion in an arbitrary and capricious manner; and that its decision should therefore be reversed by the Board.

The Carrier states that the tools that the Machinists had been using for ten years to remove water pumps had been deemed unsafe by the Maryland State Occupational and Safety Commission (MOSHA), which had directed management to remove them on approximately March 1, 1990; that the Claimant had admitted that there was oil on the running board of the locomotive on the date in question, but had chosen to work in it rather than have it cleaned up; and that there were straps available for the lifting of water pumps on the date of the incident, but that Claimant did not wait until one was available and, therefore, was responsible for his accident; that the testimony of the other Machinists had been considered by the Carrier, but that they were not witnesses to the Claimant's accident and did not provide any testimony that directly related to it, only testimony about the tool controversy at the facility. The Carrier states that it purchased new approved chains and made them

available to all employees on a rack on the shop floor and suggests that the Claimant was emotionally upset about losing his personally assigned chains, and this prompted him to take a stubborn disregard for his own safety to the extent that he chose to lift the pump without any assistance, mechanical or human.

The Board has examined the entire record, particularly the Hearing testimony, and the Awards cited by both parties in support of their positions. With respect to the Organization's contention that management violated Rule 32 of the Agreement by not citing a violation of any Rule in its charge, this Board is of the opinion that, while citation of specific rules in a charge is preferable, there was sufficient specificity in the charge formulated by the Carrier to apprise the Claimant of what he was being tried for and to enable him to prepare testimony on his behalf.

It is primarily with the Organization's assertion that the Carrier failed to produce sufficient probative evidence to sustain its charge and its assessment of discipline that we must concern ourselves. The record shows that the Claimant had asked his immediate Supervisor for a chain and was told he did not have one. The Claimant was unable to find a strap in the storeroom and, given that no strap was signed out, inferred that none was available on the property. Another witness, who also testified to the nonavailability of a strap, also said it was not suitable for lifting water pumps. Another witness testified that there had been neither a chain nor a strap in the storeroom on the date of the Claimant's accident. Although the Supervisor testified that lifting chains were available, cross examination and testimony by other witnesses revealed that they were two 20-foot continuous chains, rather than 1-foot chains, and that they were unsuitable for lifting water pumps. Testimony that the use of 1-foot chains is the safest way to lift water pumps was unrebutted. Following the accident, one employee declined to move a pump until a chain had been made up for him, and although management balked at making up the chain, it did not charge the employee with insubordination for insisting on having what had hitherto been widely regarded as the most suitable and safest tool for the job.

Management has the clear responsibility to set safety standards and to enforce them. However, this Board concurs with the Organization that the record shows that management failed to provide a sufficient number of suitable tools for workers to safely perform the tasks assigned them. Accordingly we find that the Carrier unjustly suspended the Claimant and we direct that he be made whole and his record cleared.

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 20th day of May 1992.