

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12413
Docket No. 12430
92-2-91-2-239

The Second Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(CSX Transportation, Inc.
(former Baltimore & Ohio Railroad Company)

STATEMENT OF CLAIM:

1. That the former, Baltimore & Ohio Railroad Company, now CSX Transportation (Carrier), in violation of Agreement Rule 32 unfairly, arbitrarily and capriciously assessed Electrician W. Hughson five (5) calendar days suspension as a result of hearing on October 26, 1990; and,
2. That the Baltimore and Ohio Railroad Company compensate Claimant W. Hughson for all time lost as a result of the unfair, arbitrary and capricious discipline; and,
3. That Carrier expunge all mention of this matter from Electrician Hughson's record.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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, an Electrician at Carrier's Cumberland Locomotive Shops, was charged with responsibility for a personal injury he incurred on October 4, 1990. Subsequent to a Hearing, he was found guilty of the charge and assessed the penalty of a 5-day suspension.

At the Hearing, it was developed that one of Claimant's duties was to inspect the rotating cooling and brake grid fans and the grids themselves on the tops of locomotives. He did so by ascending to the top by a ladder at the rear of the locomotive, and then walking forward along the unit and making his inspection while the equipment was running. Claimant testified that he felt it was safer to come down from the engine by stepping down onto the nose, rather than retracing his steps and descending by the rear ladder as the Carrier in its Submission stated was the normal practice. He testified that he discussed this situation with General Foreman Mitchell several months previously, had received permission from him to proceed in that manner, and got down from the locomotive in the usual manner on October 4, 1990, but twisted his knee in the process.

The Carrier alleges that he jumped, not stepped, from the locomotive roof to the nose in violation of Safety Rule 672, which reads: "Employees must not jump from a ladder, scaffold, platform, or from other elevated position or slide down a ladder."

The Carrier produced no evidence of what the normal practice of alighting the locomotive was, and no evidence that Claimant had "jumped" from the roof of the locomotive. It would, in fact, defy common sense to infer in this case that an experienced employee such as the Claimant would jump this distance instead of stepping down as he testified he did. Finally, the Carrier did not produce General Foreman Mitchell to rebut Claimant's testimony that management had given him permission to come down this way.

It is well-established that the Carrier has the burden of proving by "substantial evidence" that Claimant is guilty of the charge. The Supreme Court has defined the term as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion " (Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229).

Here the Carrier established only that Claimant injured his knee while coming down from the top of a locomotive. While the Carrier is not charged with the burden of producing eye-witness testimony and can carry its burden of proof by circumstantial or other evidence, the Carrier in this case has made a presumption of guilt by the mere fact that Claimant sustained an injury. The Board thus concludes that the Carrier failed to support its finding of guilt by substantive evidence and that such finding was therefore arbitrary. Accordingly, we will sustain the claim.

A W A R D

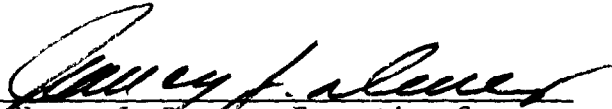
Claim sustained.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of August 1992.