

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(International Association of Machinists and  
( Aerospace Workers  
PARTIES TO DISPUTE: (  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That the Chicago and North Western Transportation Company (hereinafter referred to as the "Carrier") violated the provisions of Rule 35 of the July 1, 1921 Joint Agreement, as subsequently amended July 1, 1979 when, subsequent to an investigation which was neither fair nor impartial, it unjustly and improperly suspended Scale & Work Equipment Inspector Jeff Breed (hereinafter referred to as the "Claimant") from service for a period of five (5) days.

2. That accordingly the Carrier be ordered to compensate Claimant for all wages lost while suspended, additionally crediting Claimant for time lost for vacation and other benefit rights, and that record of the investigation proceedings, including reference to his unjust discipline, be expunged from Claimant'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 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 was suspended for five days as a result of an incident which occurred on May 29, 1990. At that time, Claimant was using a speed swing to move a spike puller onto a low boy trailer truck. Claimant came in contact with an electric power line, breaking the wire and a utility pole. Damage was originally estimated at \$250.00, but later determined to be \$450.00.

Claimant testified that he had received no formal training in operating a speed swing and that he had operated a speed swing three or four times prior to the date in question. Claimant further testified that, prior to moving the spike puller, he and the lowboy truck driver surveyed the area and determined how they would move the spike puller.

When asked whether he was aware of the wire before he hit it, Claimant responded, "I think subconsciously I knew the wire was there, but when we stopped, I forgot about the wire." When asked whether he felt qualified to operate the speed swing to move the spike puller, Claimant responded, "I felt I was operating in a very safe manner and felt that everything was under control."

The Organization contends that Claimant was denied a fair Hearing because the Hearing Officer was biased and had prejudged Claimant's guilt. The Organization further argues that Claimant was assigned to operate equipment in which he was not formally trained and that Claimant was following his Supervisor's orders when he used the speed swing to move the spike puller. In the Organization's view, the speed swing was ill-equipped for the job. The Organization further contends that there was minimal damage and the penalty was too severe and, therefore, was arbitrary and capricious.

Carrier argues that the Hearing Officer performed his duties in a fair and objective manner. Carrier contends that Claimant felt qualified to operate the speed swing, was aware of the wire but struck it causing the damage. Carrier further argues that, because the offense is serious, the five day suspension is in accordance with Carrier's discipline policy.

The Board has reviewed the transcript of the Investigation. We find no evidence that the Hearing Officer was biased or prejudged Claimant's guilt.

The record reveals that Claimant was aware of the utility wires but forgot about them when he had to stop and wait for traffic to clear before crossing the road. Claimant believed that he was capable of controlling the speed swing and operating it safely. Claimant's neglect of the wires, rather than his lack of formal training, caused the accident.

Carrier's discipline policy provides, in relevant part:

(1) Actual Suspension From Service for Five Calendar Days

(a) If the employee has a history of frequent and continued minor offenses and has previously received a formal written warning that he will, thereafter, be subject to the discipline system, this method will be used the first time the employee is found guilty of a minor offense after receiving the formal warning.

(b) This method of discipline may also be used without prior issuance of a Letter of Warning in serious cases such as, but not limited to, when an employee disregards his responsibilities by substantially depriving the Company of the employee's services by sleeping on duty, absenting oneself without permission, engaging in flagrant prolonged inattentiveness to duty, or by engaging in serious negligent conduct or serious rule violations."

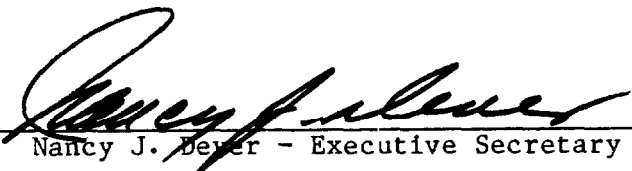
Claimant was not subject to the discipline system at the time of the incident. The propriety of the suspension thus depends on whether Claimant's conduct was a minor or a serious offense. We recognize that the actual damage totalled only \$450. Nevertheless, contact between equipment and power lines has a strong potential for substantial physical injury or property damage. We agree with Carrier that the offense was serious. Because Carrier followed its discipline policy, we cannot say that the five-day suspension was arbitrary or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of September 1992.