

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12453
Docket No. 12501
92-2-92-2-14

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Fireman & Oilers
(Soo Line Railroad Company

STATEMENT OF CLAIM:

1. Under the current controlling Agreement, Mr. C. Strickland, Laborer, Chicago, Illinois, was unjustly dealt with when assessed an entry of facts on his personal record, following a hearing held on March 5, 1991.

2. That accordingly, Soo Line Railroad Company be ordered to remove any reference of an entry of facts from his personal file.

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 January 13, 1991, Claimant was assigned to perform work at the fuel rack at the Bensenville Diesel House. At approximately 6:00 A.M. he was throwing the switch for the run around track. In the effort he strained his right arm. He filed a 172 Accident Report and was later charged with failure to properly operate the switch. In accordance with contractual provisions, an Investigation was conducted on March 5, 1991 and the Claimant was notified on March 22, 1991 that the Investigation revealed that he failed to properly operate the switch and that he had, therefore, violated Safety Rule 141 and would be assessed the penalty, which is the basis of this complaint. During the testimony in the Investigation, the Carrier utilized General Safety Rule 1 as background for the use of Safety Rule 141. The Rule reads in pertinent part:

"Safety Rule 1. Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

Safety Rule 141. Before operating switches . . .
Always protect against the following:

. . . strains and sprains."

There is considerable discussion in the record regarding a verbal agreement between the parties to resolve the issue. The Carrier maintains it was an agreement but the Organization views it as a non-entity since it was not agreed to by the Claimant or reduced to writing. It is not necessary to resolve that disagreement in order to arrive at a decision on the merits of the stated claim.

The Organization claims that the Investigation illustrated a total disregard of the fundamental concept of due process since the Carrier had predetermined that the Claimant was guilty prior to establishing all the facts. It bases that judgment on the transcript of the Hearing wherein a Carrier witness, when queried regarding whether or not Claimant had violated any Safety Rules, responded that he had violated General Rule 1 and 141. That the witness responded in a manner adverse to the Claimant is an essential part of due process, not a destruction of the principle. He was not the Hearing Officer. The fact that an unfriendly witness testifies in a manner adverse to the Claimant's interest does not constitute pre-judgment by the Hearing Officer.

The facts in the stated claim are relatively simple. The Claimant was assigned the task of throwing the switch. The Foreman testified at the Hearing that the Claimant reported to him that snow and ice were blocking the points of the switch and keeping the switch from going all the way, thus his arm was strained. Claimant testified that such was the case and that he did go ahead and throw the switch. Claimant stated that he was familiar with the Rules. His failure to make any attempt to clean the snow and ice from the switch before throwing it falls short of the degree of safety awareness outlined by the Rules and required in the safe operation of the enterprise. This Board finds that the Investigation was properly conducted and that the penalty is not capricious, arbitrary, or excessive.

A W A R D

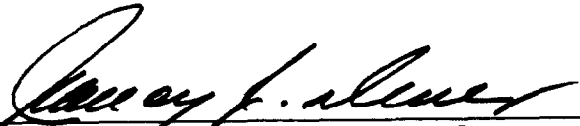
Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1992.