

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12692
Docket No. 12725
94-2-93-2-45

The Second Division consisted of the regular members and in addition Referee John F. Hennecke when award was rendered.

(International Brotherhood of Electrical
Workers
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM:

- "1. That at Waycross, Georgia, on March 6, 1991, CSXT violated the controlling Agreement, particularly Rule 32, when formal investigation was held with Electrician W. Faison, ID #157493, and CSXT neglected to apprise Mr. Faison and the Local Chairman in writing of the precise charge and subsequently CSXT, on April 24, 1991, assessed discipline of twenty days for alleged violation of Rule 1 of the CSXT Safety Rules.
2. That Electrician W. Faison be compensated for eight hours pay at the pro rata rate for twenty days by reason of CSXT unjustly suspended Electrician Faison beginning April 24, 1991, through May 13, 1991, and he be made whole for all vacation rights, all health and welfare and insurance benefits including Railroad Retirement and unemployment insurance, and his record cleared of this subject."

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 employe 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 employed by Carrier as an Electrician at the Enginehouse Facility at Waycross, Georgia. On February 17, 1991, Claimant as assigned to work as "Spot 6 Electrician", an assignment which outbounds, certifies locomotives, self loads them, and checks the speed recorders and electrical safety equipment. At approximately 6:20 P.M. on this date, Claimant was positioned behind a locker located a few feet from Locomotive No. 7641. An oil leak developed on the Michiana oil tank, spraying oil from the tank into the air, including onto the lockers. Claimant proceeded toward the locomotive to shut the engine down using the fuel cut-off switch located on the side of the of the locomotive. In the process, Claimant went between the locker and a hose rack stanchion, which was adjacent to the locker, and in so doing struck his elbow on the stanchion, resulting in a bruised left elbow. Claimant shut down the engine. A machinist in the cab of the locomotive, who was unaware the Claimant had used the fuel cut-off switch because of the leak, restarted the engine, which resulted in Claimant shutting the engine down a second time. Claimant promptly reported the injury to his supervisor and filled out Carrier's injury reports in a timely manner. Claimant was taken to the hospital by the General Foreman and subsequently lost 46 working days stemming ostensibly from this injury.

On February 27, 1991, the General Foreman wrote a letter to Claimant directing him to attend a hearing scheduled for March 6, 1991, and advising him that he was being:

"...charged with responsibility, if any, in connection with your personal injury to yourself, at approximately 6:20 P.M., February 17, 1991, when you struck your left elbow on a hose reel platform, located on the Southside of "B" Track, Spot #6."

The Organization appealed Carrier's decision, which was progressed in accordance with the rules of the Agreement and the dispute is now before this Board for adjudication.

At the outset, the Organization seeks to have the discipline assessed Claimant set aside on the basis that Carrier violated Rule 32 of the Agreement by failing to apprise Claimant and his local chairman of "the precise charge against him." The Organization premises this position on the fact that no specific rule was cited in the Carrier's notice. We find that the notice specifically set forth the time, date and location of the incident and was sufficient clear and precise to enable Claimant and his representative to prepare an adequate defense. The Board has previously held in numerous Awards that a notice, such as this one, meets the requirement of being a "precise charge" (see Second

Division Awards 6346 and 11997 and Third Division Awards 18606 and 27223).

In the letter assessing discipline, Carrier stated:

"...you were guilty of violation of Rule 1 of CSX Safety Rules due to your failure to exercise care to avoid injury to yourself and perform your duties in a safe manner."

It appears to the Board that Carrier has concluded that the fact that an employee sustains an injury is, in and of itself, proof that the employee has violated Carrier's Safety Rules. We do not agree with this premise. While strict adherence to safety rules will reduce the chances of an employee sustaining a personal injury, it cannot be said that such adherence can guarantee that no injury will ever occur. The mere fact that an employee sustains an injury is not sufficient to meet Carrier's burden of proving a violation of the Safety Rules.

We have studied the transcript of the investigation thoroughly and find that the testimony clearly demonstrates that claimant was confronted with a situation which could have resulted in serious injuries to employees and substantial damage to Carrier property. It was a situation which demanded quick response. The Board believes that the record demonstrate that Claimant's action in promptly going to the locomotive to shut the engine down was not an unreasonable course of action to take and may well have averted an even more serious incident. This Board has consistently held that it is not our function to substitute our judgment for the Carrier's, but to pass upon the question of whether there is substantial evidence to sustain a finding of guilt. In this case, the Board must conclude that the record does not contain substantial evidence to support the Carrier's finding that Claimant's action in this instance violated Rule 1 of its Safety Rules. Since Carrier has not met its burden of proof, the discipline assessed Claimant must be set aside.

Carrier, however, during the handling on the property has taken the position that the Claim pursued by the Organization exceeds what is provided by Rule 32 in case of improper disciplinary action. Rule 32 provides, in pertinent part, as follows:

"If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired and compensated for the wage lost, if any, resulting from said suspension or dismissal."

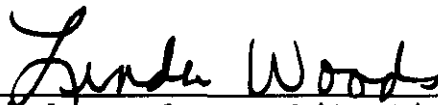
Carrier contends that the twenty day suspension was twenty calendar days and that this period included six rest days; therefore, Claimant lost only 14 days' wages during the suspension. Carrier further argues that Rule 32 limits Claimant's recovery to lost wages and, thus, there is no rule support for the claims for vacation rights, losses for lapse of coverage under health and welfare and insurance benefits, including Railroad Retirement and unemployment insurance. The Board agrees with Carrier's position. Rule 32 does not authorize us to grant any monetary relief beyond wages lost or for other retroactive benefits. Therefore, relief sought by Claimant will be limited to 14 days' lost wages and the removal of this discipline from his personal record, in accordance with Rule 32 (see also Second Division Awards 5672, 6215, 8236 and 8696, among others).

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 20th day of April 1994.