

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12773
Docket No. 12642
94-2-92-2-189

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

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
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(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"1. That under the current agreement, Sheet Metal Worker H. C. Hardebeck was unjustly disciplined when he was given a ten day overhead suspension with a six month duration.

2. That accordingly, the Carrier be required to remove the discipline from Mr. Hardebeck's personnel file. In addition, if any time or benefits have been lost as a result that he be made whole for any loss."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 December 23, 1991, Claimant was notified of an Investigation, to be held January 6, 1992, concerning Claimant's responsibility in connection with an injury sustained by another employee resulting from an incident on December 5, 1991, involving the pushing of a tractor mower into the repair shop. The Investigation was postponed to and held on January 29, 1992. On February 27, 1992, Claimant was issued a ten day overhead suspension for his actions which the Investigation found contributed to the accident.

On December 5, 1991, Claimant and another Mechanic sought to push a tractor mower into the repair shop. They were unable to push it by hand. They decided to use a truck to push the mower but observed that the truck's rear bumper would hit the tractor's rear wheels. They conferred and decided to use a four to five foot long two by eight board to accomplish the task. Claimant waited in the cab of the truck while the other Mechanic positioned the board. The other Mechanic was to signal Claimant when the board was in position and he was clear of the area and Claimant was to back the truck up to push the mower. While Claimant was waiting for the signal, the other Mechanic fell and broke a rib.

The Organization contends that Claimant was denied a fair Hearing because Carrier did not give him adequate notice of the charges. The Organization further argues that Carrier failed to prove that Claimant was in any way responsible for the other Mechanic's injury. The Organization maintains that the accident was caused by the other Mechanic leaning on the hitch bar and losing his balance. The Claimant, the Organization observes, was simply sitting in the truck waiting for the other Mechanic's signal.

Carrier contends that Claimant was given sufficient notice of the charges. Carrier further argues that the evidence established Claimant's responsibility because Claimant admitted that he and the other Mechanic agreed on the methodology to move the tractor and that this methodology, using an unsecured board, was unsafe.

The Board has reviewed the Notice of Investigation. We find that it gave the Claimant sufficient notice of the charges. The Notice of Investigation clearly apprised the Claimant that he was charged with carelessness and failing to work safely in pushing a tractor mower into the repair shop. It also specified the date, time and location of the incident.

Our review of the evidence developed on the property, however, convinces us that Carrier failed to prove that Claimant was responsible for the accident. The Foreman testified that there were no Rules governing the situation and that the matter was left to the employees' judgment to decide how best to move the mower into the shop. Although the Foreman suggested that rather than use an unattached board, Claimant and the other Mechanic should have rented a tow truck, Claimant testified without contradiction that the method they decided to use had been used in the past on this property.

Furthermore, the evidence showed that the use of the board did not result in the injury. Rather, the other Mechanic fell because he leaned on a part of the three point hitch which he erroneously believed was strong enough to support his weight. When he put too much weight on the hitch, it gave and he fell across it breaking a rib.

Thus, the use of a board to push the mower did not cause the accident. Rather, the accident resulted because the other Mechanic leaned on a hitch that was incapable of supporting his weight and lost his balance. Claimant was sitting in the cab of the truck at the time of the accident. Safety is of the utmost importance in the railroad industry, but the evidence did not establish that Claimant was responsible for the accident. Claimant should not have been disciplined.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of November 1994.