

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13166

Docket No. 12952

97-2-94-2-105

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(International Brotherhood of Firemen and Oilers,
(AFL-CIO System Council No. 15
PARTIES TO DISPUTE: (
(Illinois Central Railroad**

STATEMENT OF CLAIM:

“1. Under the current controlling Agreement, Laborer J. Lucas, Memphis, Tennessee, was unjustly dealt with when suspended for a period of five (5) days (February 4, 1994 through February 8, 1994), following a hearing held on January 18, 1994.

2. That accordingly, the Illinois Central Railroad Company be ordered to compensate Mr. Lucas for all time lost at the pro rata rate and the mark removed from his 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 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 were given due notice of hearing thereon.

Following an Investigation, the Claimant was “found guilty of violating safety and company rules and as a result injured yourself during your tour of duty on December 29, 1993.” As a result, he was assessed a five-day disciplinary penalty.

The Claimant, who was assigned as a Laborer, was operating a forklift to dump trash from a small dumpster into a larger dumpster. As set forth by the Organization, there is frequent difficulty in efficient emptying of the smaller dumpster, requiring the forklift operator to climb onto the receiving dumpster to complete the work. The Carrier does not dispute this; rather, it emphasizes that this was *not* the cause of the injury and alleged safety violation.

The accident report completed by the Claimant refers to a "mashed middle finger." There is convincing testimony that this injury resulted, as argued by the Carrier, from the Claimant's unsafely letting his hand remain on the track of the small dumpster, which rolled back and injured his finger. While this was not a lost-time accident, the Board finds that the Claimant was properly determined to be working in an unsafe manner.

The Board finds no basis to disturb the Carrier's action.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 29th day of October 1997.