

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13333

Docket No. 13201

98-2-96-2-106

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

(International Brotherhood of Electrical Workers
(System Council No. 14

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM:

- “1. That under the current Agreement, Maintenance of Way Department Electrician P.R. Hug, Claimant, was unjustly treated when he was suspended form (sic) service on May 31, 1995 through June 6, 1995, a period of seven (7) days, for allegedly violating Rules 1.1 and 1.1.4 of the Safety and General Rules for All Employees when he sustained a personal injury on May 26, 1995.

2. That accordingly, Southern Pacific Lines (Western Lines) be ordered to rescind the seven (7) day suspension and compensate Electrician P.R. Hug for all lost wages due to the seven (7) day suspension with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages to include interest at the rate of six percent (6%) per annum and expunge all reference of the unjust discipline from his personal 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.

By letter dated May 31, 1995, the Claimant was directed to attend an Investigation "to develop the facts and place responsibility, if any, in connection with your failure to utilize the bucket on the bucket truck in such a manner that would allow you to safely take down light fixtures which you allege caused you to injure your left shoulder at approximately 9:15 AM on May 26, 1995 at Klamath Falls, Oregon."

Subsequent to the Investigation, the Claimant was found guilty by the Carrier. He was assessed a five working day suspension.

The Organization on the property and before this Board contends that the proceedings in this case were not handled in a fair and impartial manner. Moreover, without prejudice to that position, it maintains that the Carrier failed to produce substantial evidence that the Claimant was guilty of the charge.

Turning first to the Organization's due process contentions, we conclude that the investigative proceedings met the generally accepted standards of the industry. While the Hearing Officer, at times, was somewhat aggressive in his line of questioning, he did not overstep his role to develop the facts.

With respect to the merits of the claim, the Board finds substantial evidence that the Claimant was guilty as charged by the Carrier. The Claimant was required to take down six large light fixtures that weighed slightly more than 50 pounds. To reach these fixtures, he used a Bucket Truck with a bucket boom in which he stood. He then raised himself to each of the light fixtures, looped a rope over a rafter above the light, attached the rope to the light fixture, unscrewed the light from the rafter and lowered it to the ground by using the rope looped over the rafter as a pulley mechanism.

While the Claimant worked on the next to last fixture, he wrenched his shoulder and tore a tendon in his hand. At the Investigation, one of the Carrier's Supervisors testified that the Claimant told him that the bucket brake, which controls the swaying movement of the bucket, was not holding the bucket in position. This caused him to move the rope in an attempt to compensate for the movement of the bucket. It was this element of the work cycle that the Carrier concluded caused the Claimant's injury.

The Claimant, later in the Hearing, testified that if the "bucket moved it was insufficient amount" to cause harm. The Carrier, as is its right, found the Supervisor's testimony more credible than the Claimant. The Board also finds that this was a reasonable conclusion. In so finding, we particularly note that the Claimant was present when the Supervisor testified. He did not challenge or question the Supervisor's version of the conversation between them at the time of the incident at issue here.

With respect to the discipline assessed, we do not find it excessive, noting that the Claimant does not have a good safety record.

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 8th day of October 1998.