

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13719

Docket No. 13615

03-2-01-2-19

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

**(Brotherhood Railway Carmen Division
Transportation Communications International Union)**
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.

STATEMENT OF CLAIM:

“Claim of the Committee of the Union:

1. That; Montana Rail Link violated the terms of our current Agreement, in particular Article 13 of the Montana Rail Link Agreement, when they arbitrarily and unjustly disciplined Helena, Montana Carman William Honadel.
2. That; accordingly, the Montana Rail Link be directed to expunge the entry on his personal record placed there by letter dated November 21, 2000, stating the following:

November 21, 2000: Censured for violation of Montana Rail Link General Safety Rules 1.1.1 and 1.1.2, in connection with a back injury he sustained at approximately 1:30 p.m. on October 23, 2000, at milepost 234.2, resulting from the fact finding proceeding held November 2, 2000.”

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.

Shortly after 11:00 A.M. on October 23, 2000, Assistant General Mechanical Foreman Elsenpeter and Carman W. C. Honadel (the Claimant) were dispatched to East Helena to examine a damaged rail car, after which Elsenpeter determined that the car needed to be sent back to Helena for repair. To accomplish same, Elsenpeter directed the Claimant to do the following:

1. Use the track jack to jack up the center sill to create some clearance from the gear pan.
2. Place a second jack under the gear pan to absorb its weight, thereby allowing Claimant to move, or pivot the gear pan as necessary.
3. Secure the gear pan to the sliding center sill with two bolts to secure the rail car for movement.

Thereafter, Messrs Elsenpeter and Honadel returned to Helena where the Claimant retrieved material and equipment for his assignment.

According to the Claimant's testimony, when he returned to repair the disabled rail car, he attempted to use the track jack to lift the center sill, but was unable to do so, instead opting to use the lift on his boom truck. After the Claimant followed the initial instruction, however, he disregarded Elsenpeter's directive to use a track jack to support the weight of the gear pan. Instead, the Claimant climbed under the car, and lying on his back, raised his legs and using the force of his lower body and hands the Claimant attempted to move the gear pan. When he did so, the Claimant reported that he "felt a pain" in his lower back. Thereafter, when he returned to Helena, the Claimant was transported to the hospital where he was examined and given a prescription for pain.

As a result of the incident, by notice dated October 27, 2000, the Claimant was instructed to attend a fact finding in connection with the alleged October 23 back injury. Following the November 2, 2000 Investigation, the Carrier informed the Claimant that:

"After reviewing the transcript of the fact finding session which was accorded you on Thursday, November 2, 2000, in connection with back injury you sustained at approximately 1:30 p.m. on October 23, 2000 at mile post 234.2, you are being censured for violation of Montana Rail Link General Safety Rules 1.1.1 and 1.1.2.

The following entry will be placed on your personal record:

'November 21, 2000:Censured for violation of Montana Rail Link General Safety Rules 1.1.1 and 1.1.2 in connection with a back injury he sustained at approximately 1:30 p.m. on October 23, 2000, at milepost 234.2.'"

The Organization protested the censure, maintaining that, in accordance with Article 13, paragraph F, the discipline should be expunged from the Claimant's record. Specifically, the General Chairman contended that the Carrier failed to prove that the Claimant violated the Rules for which he was cited.

The Carrier denied the claim, asserting that the Claimant failed to follow his supervisor's instruction to place a jack under the gear pan. Instead, according to the Carrier, the Claimant "neglected to plan his work to avoid injury" in accordance with General Safety Rule 1.1.2, and did not "take the safe course" as provided for in General Safety Rule 1.1.1.

At the outset, the Claimant denied that Elsenpeter had instructed him to use a track jack to move the gear pan into place. For his part, Elsenpeter stated, unequivocally, that he had specifically instructed the Claimant to: "Place a second jack under the gear pan to absorb its weight."

Reduced to its essence, this case presents conflicting testimony from the Foreman and the Claimant concerning whether the Claimant was told to "place a second jack under the gear pan." In railroad arbitration, this Board is an appellant arbitration tribunal and we are unable to make credibility determinations from a cold transcript. The Carrier evidently accepted Foreman Elsenpeter's version of events, rather than that of the Claimant's, and there is nothing in this record which presents any valid basis for us to second guess that judgement. In short, the Carrier adduced sufficient evidence to support its determination that the Claimant was culpable as charged and there is no showing that a letter of censure was harsh, unreasonable or excessive disciplinary 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 10th day of June 2003.