

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13789

Docket No. 13674

03-2-02-2-35

The Second Division consisted of the regular members and in addition Referee Don A. Hampton when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. The Delaware and Hudson Railway Company (Division of CP Rail System) violated the terms of our current agreement, in particular Rule 26.1 when they arbitrarily assessed the record of Wayne L. Martineau with a Formal Caution, as a result of an investigation held on December 11, 2001.
2. That accordingly, the Delaware and Hudson Railway Company be ordered to remove the discipline from the record and file of Carman Wayne L. Martineau.”

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 correspondence dated December 5, 2001 the Claimant was notified to attend a formal Investigation on December 11, 2001. The purpose of the Investigation was to, "... determine your responsibility, if any, for your alleged violation of NORAC Rules R, S, effective January 17, 2000, and Rules 1.1, 1.5A, 1.11 (p. 1), 4.1 and 4.4 (p. 5) from the D & H Employee Safety Code and Policy (DHC-1000), effective July 1992, while you were employed as a Carman on November 27, 2001 at approximately 1300 Hours at Saratoga, New York which resulted in an alleged personal injury and failure to promptly report."

The formal Investigation was convened and held as scheduled. As a result of this Investigation the Claimant was notified by Certified Mail that his record had "... been assessed with a Formal Caution for violation of Rule(s): Failure to comply with NORAC Rule S, effective January 17, 2000, and Rules 1.1, 1.5a, 1.11 (p. 1), 4.1, and 4.4 (p. 5) from the D & H Employee Safety Code and Policy (DHC-1000), effective July 1992, while you were employed as a Carman on November 27, 2001 at approximately 1300 Hours at Saratoga, New York which resulted in a personal injury." The claim was initiated and properly handled on the property and is now before the Board for adjudication.

The record reflects that on November 27, 2001 the Claimant was injured while attempting to shim a coupler with a 12-pound sledgehammer. The Claimant was injured when the sledgehammer bounced off the shim and struck the Claimant on his left side. Medical examination subsequently revealed only bruised ribs or possibly a fracture not revealed by x-rays. The Claimant was given two prescriptions and was allowed to return to work without any time lost.

The Carrier argues that the Claimant is obviously in violation of the aforementioned Safety Rules when he chose an improper course of action to shim a coupler. The record however reflects that the option chosen by the Claimant is an accepted one. The Claimant chose an option that he and other Carman had used in the past and was a method known and accepted by the Carrier. It is also noted that the shim was eventually installed using the same technique as attempted by the Claimant.

The Carrier has not substantiated that the Claimant violated the Rules for which he was disciplined. The claim must be sustained.

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 11th day of March 2004.