

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13813
Docket No. 13657
04-2-02-2-16**

The Second Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

**(Brotherhood of Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway**

STATEMENT OF CLAIM:

"Claim of committee of the Union that:

- 1. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13, when they arbitrarily suspended Harold T. Huard from service as a result of an investigation held on November 14, 2000.**
- 2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Harold T. Huard in the amount of eight (8) hours pay, for each workday he was withheld from service, commencing December 5, 2000, through and including December 7, 2000. Additionally, he is to be compensated for attending this investigation and further, the carrier is to remove any correspondence in regards to this investigation from his personal record and file."**

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.

On September 27, 2000, the Claimant, H. T. Huard, was working with another Carman, W. Dostie in the freight room of the Waterville Car Shop. When Dostie attempted to remove a jack from under the frame of a freight car, the jack kicked out and Dostie's finger was injured by the falling truck.

The Carrier conducted an Investigation and determined the Claimant had violated Safety Rules in setting up the work area that day.

By letter dated October 6, 2000, the Carrier directed the Claimant to appear at a formal Investigation on October 24, 2000. The purpose of the Hearing was to develop facts and determine responsibility, if any, in the Claimant's alleged violation of Safety Rule(s): GR-D, GR-J, 8 and 199. The Hearing was postponed and held on November 14, 2000.

By letter dated November 28, 2000, he was assessed a three-day suspension for failing to follow Safety Rules: GR-D, GR-SJ No. 8 and No. 199.

The Carrier argues there was more than substantial evidence of the Claimant's culpability. They reference the testimony of Carrier witnesses who described why the Claimant failed to comply with the Rules. They argue that even the Claimant admitted that he had violated the Rules.

The Carrier maintains the Organization's procedural objections were totally unfounded and cannot be considered to overturn the discipline assessed.

The Organization argues the Carrier violated the terms of the Agreement, particularly Rule 13 when they arbitrarily suspended the Claimant from service.

They dispute there was a fair and impartial Hearing. They contend the Carrier is using the Claimant as a scapegoat. They submit the Claimant had a clear disciplinary record and the Carrier progressed this offense to the third or fourth step of the progressive discipline.

They further maintain the injury of Dostie had nothing to do with the Claimant. They claim the jack was not in a jacking position when the employee was injured. Thus, they contend, the manner in which the Claimant had set up the jack had nothing to do with the injury. They assert Dostie was the individual who could have avoided the injury and should have been present at the Hearing to testify. They question the Carrier's decision not to charge Dostie.

They insist the penalty of a three-day suspension for an employee with 15 years of experience and a clear record is excessive and unjust. They assert the Claimant should be made whole.

There is substantial evidence to support the charges against the Claimant. Furthermore, he forthrightly admitted to the Rule violations. We do not find sufficient reason to overturn the three-day suspension.

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 21st day of October 2004.