

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13825

Docket No. 13715

05-2-03-2-60

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carman Division of TCU
(Delaware and Hudson Railway Company (Division of
(CP Rail System)

STATEMENT OF CLAIM:

- “1. That 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 Carman J. N. Alasky with a Formal Caution for violating five (5) Carrier safety rules, as a result of an investigation held on January 28, 2003.
2. That accordingly, the Delaware and Hudson Railway Company be ordered to remove the discipline from Carman J. N. Alasky's 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.

The Claimant filed an injury report as a result of feeling a sharp pain in his right elbow while tightening a bolt on a freight car at Saratoga, New York on September 19, 2002. After investigation, Claimant received a formal caution for violation of five safety rules.

We have considered the record and the parties' arguments. We do not find substantial evidence that the Claimant was negligent in the performance of his duties. However, we are satisfied that the Claimant was careless in his choice of tools to perform the task which resulted in his injury. For that, Claimant's formal caution shall be reduced to a letter of instruction.

AWARD

Claim sustained in accordance with the Findings.

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 1st day of April 2005.