



Award No. 17239

Docket No. SG-17714

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railroad Company that:

(a) Carrier should now be required to clear Mr. V. C. Culver's record of charges and remove any discipline which was imposed following an investigation on September 22, 1966, in connection with the alleged violation of Rule 3215 which resulted in his suffering a personal injury on August 30, 1966.

(b) Carrier should also be required to pay Mr. Culver for all time that he has lost as result of its improperly assessing discipline.

(Carrier's File: 101.9-SIG 146.)

OPINION OF BOARD: In this discipline case, Claimant was assessed 15 days temporary suspension for failure to conform to Safety Rule 3215 on August 30, 1966.

Rule 3215 reads:

"Poles must be closely examined for cracks and knots before climbing.

Going up any pole before it is determined that it is strong enough to support the climber, and the strain which may be placed on it, is prohibited. Poles must be tested with pike poles or rope, care being taken to insure that the strain is borne by the pole being tested and that it is not held by line or guy wires. The test shall be made by pushing or pulling the pole back and forth at right angles to the line. Care should be taken to avoid injury should the pole break while being tested. When transferring wires from old to new poles the old pole must be lashed to the adjacent new pole with rope, wire or guy strand before untying wires or renewing cross arms. When new pole is not located adjacent to the old pole the latter must be securely guyed or braced with four (4) pike poles before the line wires are untied. If pole is over 30' in length in addition to the four pike poles, top should be guyed

with rope and digging bars placed in ground at base of pole to prevent it from kicking out in case it should break off.'"

It is Claimant's position that Carrier's action in disciplining him this instance was unjust, arbitrary and unreasonable because (a) Carrier did not make clear to Claimant the consequence of disobedience or disregard of the safety rules; (b) Carrier did not apply and enforce the rules with reasonable uniformity for all employees; (c) Carrier violated Rule 64 of the Agreement when it failed to furnish Petitioner with pike pole to test the safety of the pole on which Claimant was hurt; (d) Carrier temporarily suspended Claimant in order to harass him because he was injured.

The facts show that on August 30, 1966, Claimant and Signalman Helper W. H. Hunt, were performing pole line work; that Claimant and Employee Hunt tested a pole by pushing on it from all sides; that Claimant climbed the pole and when he was about 10 to 12 feet above the ground, the pole broke resulting in Claimant falling and severely injuring himself.

Carrier contends that inasmuch as Claimant testified he did not have a pike pole and did not test the pole with a pike pole before climbing it, then Claimant violated the specific requirement of Rule 3215 that: "Poles must be tested with pike poles."

The Organization contends that inasmuch as Claimant was a new employee with four months seniority, Carrier's foreman should have advised him of his nonconformity with the rules by not using a pike pole when said foreman saw him working on the day before the accident, August 29, 1966, and relies on Award 8431, in which this Board stated: "A Carrier's disciplinary decision is unreasonable, arbitrary, capricious, or discriminatory when * * * (a) the Carrier did not make clear the consequence of disobedience or disregard of the rules; * * *."

In view of Claimant's infantile experience in performing the work in question, it was the obligation of Carrier to see to it that Claimant was aware that he was not conforming to the safety rules (not using a pike pole in this instance to test poles before climbing them) and that he would or could be disciplined for failure to so conform.

The record herein shows that Claimant's foreman testified that the work of removing the old wire from the poles started on August 29, 1966; that he was present when some of the work was being performed; that on August 30, 1966 only two men were doing this work; that he was not present when the accident occurred; that Claimant and Employee Hunt had line tools, gaffs, safety belts and gloves to do the work.

Due to Claimant's coarse inexperience, we feel that Carrier did not meet the standard as set forth in this Board's said Award No. 8431 in that Carrier did not make clear to Claimant in this instance the consequence of disobedience or disregard of said safety rule, and therefore Carrier abused its discretion in assessing a penalty of 15 days temporary suspension.

In regard to damage, Carrier argues that inasmuch as Claimant was not laid off for the 15 days temporary suspension, but was off work due to injuries received from the fall, he is not entitled to wage loss as provided by Rule 60 of the Agreement, the pertinent part thereof which provides:

"If the charge against the employee is not sustained it will be stricken from the record. If by reason of such unsustained charge the employee has been removed from the position held, reinstatement will be made and he will be compensated for wage loss, if any, suffered by him."

Inasmuch as Claimant was not temporarily suspended from his position because of disciplinary action, but because he was off work due to his injury, he therefore suffered no wage loss as a result of said disciplinary action taken against him, and thus his claim for damages must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated in accordance with Opinion.

A W A R D

Claim (a) sustained.

Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1969.