

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19749
Docket Number CL-1972

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(George P. Raker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-70%)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of one day suspension without pay on Ivan R. Imler, Assigned Laborer, Reclamation Plant, Heavy Repair Shops, Altoona, Pa.

(b) Claimant I. R. Imler's record be cleared of the charge brought against him on November 17, 1970.

(c) Claimant I. R. Imler be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: Claimant, employed as an Assigned Laborer in the Material Management Department of Carrier's shop in Hollidaysburg, Pennsylvania, was assigned the task of unloading a carload of freight on November 11, 1970. He was aided by an overhead crane. While Claimant was moving some material in the car in order to permit the functioning of the crane, some items shifted striking his foot and he sustained an injury. As a result of this incident Claimant was notified to attend an investigation in connection with the following charge:

"Violation of Safety Rule 5165, which reads: Keep hand or foot in position where material, transfer plate or other object being handled cannot fall or shift onto or against it, or be caught between object being handled and another object. If impossible to do this, use suitable object as a skid, support or stop at side, at end, on top or under object being handled to provide protection,' resulting in personal injury on November 11, 1970."

Following the hearing, Claimant was assessed a one day suspension and a warning. The transcript of the investigation reveals that the only evidence produced by the Carrier was the testimony of Claimant. In our opinion the evidence produced at the investigation was insufficient to sustain the Carrier's conclusion. Since the investigation did not produce substantial evidence in support of the charge, we will sustain the claim.

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.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E.A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1973.