

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20252
Docket Number CL-20255

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, **Freight** Handlers, Express and
(Station **Employees**

PARTIES TO DISPUTE: (

(George P. Baker, Richard C. Bond, and **Jervis**
(**Langdon**, Jr., Trustees of the Property of
(Penn Central Transportation **Company**, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7328) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of 10 days suspension on C. A. Wansart, **Bill** Clerk-Key Punch Operator at the Carrier's **Kenmore** Yard in Buffalo, N.Y., Buffalo Division, **Northeast** Region.

(b) **Claimant** C. A. Wansart's record be cleared of the charges brought against him at the investigation on April 14, 1972.

(c) Claimant C. A. Wansart be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: Claimant was notified of an investigation in connection with his responsibility, if any, for a personal injury sustained by himself. After the investigation, a ten (10) day suspension was imposed based upon violation of Safety Rules 2308, 2305 and 1052.

The Organization urges that Claimant was never charged with the offense for which disciplined because the notification never mentioned the above cited safety rules.

Contrary to Carrier's urging, we feel that the Organization did raise the asserted discrepancy on the property. However, **we** feel that recent Awards on this property control. The charge gave Claimant notice that his conduct on the day in question was under investigation. Our review of the record does not suggest that he was misled. See Awards 19636 (Hayes) and 20143 (**Blackwell**).

A description of the events leading to the injury is best demonstrated by Claimant's testimony at the investigation:

"Q. At what time did you report for this assignment?

A. Approximately one minute to 11.

Q. Our records indicate that at **11:05** P.M. you sustained a personal injury. **What** was the **nature** of this injury?

A. A dislocated right big toe.

Q. What duties were you performing at the time you sustained this injury?

A. Job **2C**, which on a Saturday and Sunday is a combination Bill Rack, Key punch.

Q. My question was, what duties were you performing?

A. I was going to check an inbound of Job 240.

Q. How did you **sustain** this injury?

A. When I first came in, the **man** I was to relieve, John **Weber**, told me that Job 240 was here and going to pull into the Yard, so I assumed there out, as I call it the Branch, so I figured I had enough time to get my coat off and get myself a drink of water. As I was at the water fountain I heard the ramble of the train. I asked one of the engineers out there working, and he told me that that was Job 240 coming into the Yard. I already had **my** pad and pencil so I went out toward the back of the building to catch the **numbers**. In the process of going to the back door as I showed the door open **I** stubbed **my** toe, in which this made **me** lose my balance, falling to the ground.

Q. Did you slip or trip over anything in the process?

A. Yes, I hit the sill step that is inside the building in the back of **Kenmore** Yard.

Q. Was the door open or closed at the back of the hall?

A. The door was closed.

Q. Was the hallway lighted or dark?

A. At this time the hallway was dark.

"Q. Could the hallway have been lit?

A. Yes, **without** doubt.

Q. **How** could it have been lit?

A. By switching on the button at the end of the hallway.

Q. Were you walking or running at the time you went through the doorway?

A. It was more than a walk, but less than a run. It was more like a hurried pace.

* * * *

Q. How could this injury have been prevented?

A. I have no idea.

Q. Do you mean to tell me that you don't know how you could have avoided being injured?

A. No sir I cannot tell you, but if I had known of some way **it** could have been prevented, **I** would not have been hurt."

Carrier relies on the following Safety Rules:

"2305, Paragraph (a) When going through halls, Passageways, around corners or up or down stairs, walk do not run."

"Rule 2308 While walking, **look ahead** to avoid openings, slipping, falling or **tripping** hazards."

"Rule 1052, Paragraph **(g)**, When walking or standing for any purpose, Look for and stay **clear** of **slipping**, tripping or falling hazards."

Rule 1052(a) "When walking or standing for any purpose, use light when required."

We do not question that a Carrier may promulgate reasonable rules of safety, nor do we deny that a violation of safety rules **may** constitute a serious offense. The rules cited above are appropriate and amount to **little** more than one would reasonably anticipate of anyone in exercising a degree of **common** sense.

While we are well aware of the long line of Awards by this Board stating that it is not our function to substitute our judgment for that of the Carrier, we are likewise aware of our responsibility to assure that Carrier substantiates its accusation by a preponderance of the evidence.

Claimant was the only witness at the investigation. We have thoroughly scrutinized his testimony with specific reference to the portion cited above.

We note that Claimant was pressed into activity immediately upon his assuming his duties. He had his pad and pencil in his hand before he took his coat off and took a drink of water. His haste of movement was motivated by a desire to properly perform his job. While that fact alone would not excuse negligent action, we are not able to conclude that the Carrier has demonstrated that he was negligent. He did not run, but walked hastily.

Carrier has stressed the fact that the hallway was dark. While we are certain that the parties who considered the matter on the property are well aware of the physical locations of the areas mentioned, the Board suffers a disability in that regard. We have searched the record in vain to ascertain if Claimant was required to pass through a dark hall in order to get to the "back door." Further, we note that the hallway could have been lit by "switching on the **button** at the end of the hallway." The record fails to advise us of the proximity of Claimant to the "end of the hallway." We are not advised if Claimant could have turned on the Light before he entered a dark hallway, or if he had to pass through the dark hallway to the "**end**" in order to switch it on.

Upon the entire record, we are not able to conclude that Carrier has, on balance, submitted evidence which preponderates to its benefit. Under this record, 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 **Employees** involved in this dispute are respectively Carrier and Employees 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

Award Number 20252
Docket ~~Number~~ CL-20255

Page 5

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1974.