

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22445**  
Docket Number **MM-22363**

Joseph A. Sickles, Referee

**PARTIES TO DISPUTE:** ( Brotherhood of Maintenance of Way **Employees**  
(Seaboard Coast line Railroad **Company**

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when **Trackman** Dennis Clement, Jr. was withheld from service on May 5 and 6, 1976 without a proper hearing as provided for in Section 2 of **Rule** 39 (System File C-4(13)-DC/12-39 (76-35) J2).

(2) The claimant's personal record shall be cleared of any reference to a rules violation in **conjunction** with his absence from duty on **May** 5 and 6, 1976 and he **shall** be allowed 16 hours' pay at his straight-time rate."

**OPINION OF BOARD:** The standard procedure for Claimant's section **force** each day - **immediately** after starting time - is a briefing by the Foreman concerning the work to be performed that day and a quiz on the safety rule of the day. On May 5, 1976, the Claimant was, admittedly, late, but the record is not precise as to how late. When he appeared, shortly after the briefing (but before the gang departed for their work location) the **Foreman** quizzed him as to the day's **safety** rule. The Claimant did not **know** the rule, **and the** Foreman sent him home. The Claimant did not report for work on the following day, but he did report on May 7, 1976, and he was permitted to work.

The Carrier emphasized, in the record, that the Claimant was not sent home because he was late, but because he did not know the rule of the day. Its position (essentially) is that failure to know the rule of the day or its content makes an **employee** unsafe. Further, the Carrier argues that it has the right to prevent an **employee** from working when it would **render** the work place unsafe. It states:

"It is standard procedure that if an employee reports for work **with** improper shoes or clothing, is sick, or in any other way physically or **mentally unprepared** to perform his duties that would jeopardize himself or others by being around **moving** trains **and** equipment, then he is not permitted to work."  
(See Page 7, Carrier's Submission)

Certainly, we have no quarrel with that proposition. But, we do not agree, under this record, that a failure to **know** the safety rule of the day **made** the **employee** a clear and present danger to himself or to his fellow **employees**.

, A logical extension of Carrier's position seems to suggest that **all an** employee need to do in order to work safely is to know the number of rules of the day **and** the contents thereof. Surely, safety is more than that; and the failure to **know** the rule of the day is not a fair assessment **of an employee's** safety factor. Such evaluations are presumably left to **examinations**, safety records and observations.

We agree with the Carrier that safety is extremely important and that the rule of the day program is an integral part of it. However, its purpose is educational, not **evaluational**.

The Claimant's failure to know the rule of the day does not **automatically** mean that he is unsafe to work. Bather, it suggests that he is not following instructions. But, if the Carrier felt the **Claimant's** actions were in violation of his responsibilities or of a rule, than it should have proceeded under the discipline rule and a hearing should have been held prior to a suspension. A hearing was not held, and therefore, the Agreement was violated.

We caution the Claimant that safety rules are for his benefit, and participation in the rule of the day program is an obligation. An inconsistent or lackadaisical performance in the program might well be proper grounds for discipline under different circumstances.

The claim for May 5 is sustained. The claim for May 6, **however**, is denied. It was not shown that the Claimant was absent on that second day due to improper discipline; but rather, his own volition.

---

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

That **the** Agreement was violated.

A W A R D

Claim sustained as to May 5, 1976.

Claim denied as to May 6, 1976.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By **Order** of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this' **29th** day of June **1979**.