

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22650
Docket Number MW-22460

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(The Denver and Rio Grande Western
(**Railroad Company**

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

(1) The thirty (30) day suspension imposed upon **B&B** Helper P. P. **Cannon** was **improper** and without just and sufficient cause (System File No. **D-19-77/MW-12-77**).

(2) The **record** of **B&B** Helper **Cannon** be cleared of said suspension **and** he be reimbursed for all wage loss suffered in accordance with **Rule 28**."

OPINION OF BOARD: An investigative hearing was held on May 16, 1977 to **determine** claimant's **guilt**, if **any**, in connection with his **alleged** violation of Safety **Rule "K"** which is referenced hereinafter. "An **employee** who is careless of his **own** safety or that of others will not be allowed to remain in the service. **Employees must not rely solely upon the carefulness of others, but must protect themselves when their own safety is involved.**"

Claimant was **found guilty** of the asserted **offense** and **suspended from service f o r t h * (30) days, effective May 26, 1977.** This **disposition is** appealed to us.

In the **instant** case, **claimant had been ordered by his foreman to withdraw from the area from which he just removed the bolts from a guard rail. He complied with this instruction and positioned himself in the center of the track. When the Bantam Crane came in to remove the unsecured guard rail from the bridge it unexpectedly got caught and claimant reentered the area to release it. As he stepped down onto the slag between the end of the ties and the guard rail, the five foot second section of the guard rail gave way and he slipped and fell off the bridge.**

Admittedly, it is **regrettable that** claimant was charged with a **safety** rule infraction **after suffering** a seventeen foot **fall** and a broken wrist. But the sum total of his deportment was manifestly **inconsistent** with the **fundamental** intent and purpose of safety rule "X". **Claimant was an experienced B & B employe, who was presumptively mindful of the potential hazards of an unsecured guardrail. He was not** instructed by his foreman to free the snagged section. **When he** took it **upon** himself to reenter a patently unsafe **area**, he placed himself in a dangerous situation. A Safety Rule, by definition, is not designed to proscribe **wilfull** infractions only, it also is **carefully** designed to address careless or indifferent **behavior as well**. It is the act rather **than** the motive which gives rise to the offense. The facts in this case establish that claimant acted in a precipitate and unsafe manner. He might have perceived the situation **to be** safe but-it was plainly filled with risks. Unlike the time when he systematically removed the bolts from the guard rail in measured fashion, he reentered the **area with** the guard rail unsecured and the exact status of the sections unknown. His response, to be sure, reflected a **genuine** attempt to resolve an unforeseen problem, but when it is objectively examined within the realistic context of the inherent dangers, it was technically violative of Safety Rule "K". For these reasons and the importance this **Board** attaches to railroad safety, we **will deny** 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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

A W A R D

Claim denied.

ATTEST:

Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 30th day of November 1979.