

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24560
Docket Number MW-24683

William S. Coleman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(
(Consolidated Rail Corporation
((former Penn Central Transportation Company)

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

(1) The two (2) days of suspension imposed upon Mr. D. P. Campbell for alleged 'Violation of Safety Rule 3110 in connection with personal injury sustained at Conway, Pa. 10:00 AM, September 17, 1979' was without just and sufficient cause and on the basis of unproven charges (System **Docket** No. 594).

(2) The claimant's record be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: 'The record discloses that the Claimant was employed as an Engineer-Work Equipment was disciplined for five (5) days suspension by the Carrier for violation of Safety Rule 3110. Carrier alleged that the Claimant sustained a personal injury to his foot while picking ballast. Upon appeal, Carrier subsequently reduced the five (5) day suspension to two (2) days suspension.

The Organization contends that the Carrier has not maintained its burden of proof in asserting that the Claimant acted in an unsafe manner, further, that the fact of an injury is not adequate to show a violation of a safety rule. The Organization points out that the Claimant had a positive record as a safe and diligent worker.

Nothing in' this record suggests that the Claimant has a history of unsafe or careless work habits. The Board is persuaded by the Organization's argument that the record does not justify the discipline assessed against the Claimant nor supports the charges placed against him. There is no evidence in this record to support the Carrier's allegations of unsafe and careless behavior by the Claimant. Not every accident is a violation of a safety rule; and the Carrier has not met the burden of proof.

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

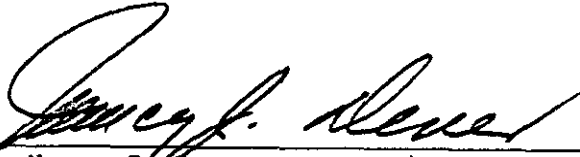
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1983.

