

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24945  
Docket Number MW-25127

Thomas F. Carey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Consolidated Rail Corporation  
(New York, New Haven & Hartford Railroad Company)

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

(1) The discipline (reprimand) imposed upon Trackman J. J. Bottary for alleged responsibility for personal injury sustained by him on April 27, 1981 and for 'alleged violation of Rule 3361 c, d, f, g, and i of the Conrail Safety Rules S7-C on April 27, 1981' was without just and sufficient cause and on the basis of unproven charges (System Docket No. NH-92).

(2) The reprimand referred to in Part (1) hereof shall be expunged from the claimant's record."

OPINION OF BOARD: This is a discipline case in which it is alleged that the Claimant was responsible for an on the job personal injury sustained by him when he carried two jacks at the same time without taking the necessary precautions. The Track Foreman reported that after picking up the jacks and walking about 15 feet, the Claimant said he "thought he had a kink in his back." Claimant further stated, "I feel something in my back" and "I will see if I can work it out." The Track Foreman asked the Claimant if he had been hurt, and when the Claimant said "yes" the Foreman called the office and took him to the hospital.

Claimant was later charged with a violation of Rule 3361, and a reprimand was issued.

The record indicates that Claimant was notified by registered mail of the original hearing date of June 4, and upon request of his Organization representative, was granted two postponements. His failure to appear at the third hearing caused the Conducting Officer to proceed with the hearing in absentia. The Organization representative was present initially and was prepared to represent the Claimant.

The Claimant failed to appear for a hearing on three (3) separate occasions and his failure to furnish a defense leaves unrefuted and unchallenged the testimony of the witnesses, which was credited by the Hearing Officer.

The Carrier has the authority to determine whether the Claimant exercised proper care in the performance of his duties and in accordance with its Rules.

The entire record of this case supports Carrier's determination of guilt and its assessment of discipline.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.

