

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 2.5388
Docket Number MW-24684

W. S. Coleman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(Consolidated Rail Corporation

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

(1) The **two (2)** days of suspension imposed upon **Trackman** J. E. Thornton for alleged 'violation of Safety Rule 3361, Paragraph C, in connection with personal injury sustained September 12, 1979 at Bentleyville, Pa: was arbitrary, capricious, unwarranted and on the basis of unproven charges (System **Docket** No. 571).

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

OPINION OF BOARD: Claimant J. E. **Thornton**, a **Trackman** with approximately three years ' service, was working with a raising gang at Bentleyville, Pennsylvania, at the time of the incident **in** question. On October 30, 1979, while reaching for an acetylene tank, he felt something **snap** in his arm. Carrier maintained that he failed to grip the tank **firmly at the most suitable point** to avoid pulling or jerking and consequently was in violation of paragraph **(g)** of Safety Rule 3360, which reads as follows:

"**(g)** Grip object at most suitable point and slowly straighten **legs**, avoiding violent pulls or jerks.'

A **trial** was held on **December** 7, 1979, and Claimant was ultimately assessed a five-day suspension. **Following** appeal on the property. the discipline **was** reduced to two days. Upon further appeal, the dispute **was** progressed to this Board **for** final adjudication.

Carrier argues that substantial evidence was adduced at a **fair and impartial** trial to support the assessed discipline. Carrier notes that it has the right to establish Safety Rules and to police their enforcement. The penalty imposed was appropriate and should not be altered.

The Organization maintains that Claimant did not violate Safety Rule 3361 and that the evidence elicited at the trial does not support Carrier's charge. This Board must agree. Claimant was operating under unusual conditions and displayed no negligence in reacting to them. carrier is correct **in stating that a Board** should not alter Management's decision where the discipline imposed is not arbitrary and capricious and there is sufficient probative evidence to **support** the charge. The latter is not the case here, however, and therefore this Board finds that the discipline imposed is not appropriate. Claimant's record shall **be** cleared of the charges and he **is to be compensated for** all lost wages.

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

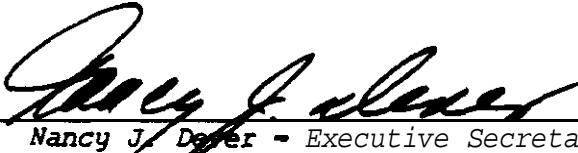
That the Agreement was violated.

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 15th day of April 1985.