

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26341  
Docket Number MW-26396

Peter R. Meyers, Referee

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

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

(1) The discipline (reprimand) imposed upon Repairman D. O. Smith for alleged 'Failure to comply with Safety Rule #3355' was without just and sufficient cause and on the basis of unproven charges (System Docket CR-668-D).

(2) The claimant's record shall be cleared of the charges leveled against him."

OPINION OF BOARD: Claimant is employed as a Repairman by the Carrier at its Canton MW Shop in Canton, Ohio. On September 20, 1983, Claimant sustained a personal injury while assisting a fellow employe in lowering a spreader bar across a pit. Claimant subsequently was directed to attend an investigation into the charge that Claimant failed to comply with Safety Rule #3355 in connection with the incident. As a result of the investigation, Claimant was assessed a written reprimand. The Organization then filed a Claim on Claimant's behalf, challenging the discipline.

This Board has reviewed the evidence and the testimony in this case, and we find that there is not sufficient evidence in the record to support the Hearing Officer's finding that the Claimant was guilty of violating a Safety Rule. The Carrier failed to present sufficient probative evidence to support its case. In cases of this kind, the Carrier has the burden of proof; and it was not satisfied.

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 violated.


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Claim sustained.

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By Order of Third Division

Attest:   
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.