

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

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

(1) The discipline imposed upon Repairman R. W. Henry for alleged 'Failure to comply with safety rule #3358 (b) and 3361 (a) ... which resulted in a personal injury' was without just and sufficient cause and on the basis of unproven charges (System Docket CR-177-D).

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

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On December 21, 1983, the Claimant, a repairman with eight years of service, was injured at the Carrier's Canton, Ohio, shops. The Claimant attended a hearing on January 25, 1984, dealing with his asserted failure to comply with Safety Rules 3358 (b) and 3361(a). Following the hearing, he was assessed a five (5) day suspension, which was later reduced to three (3) days. The Organization argues that the mere fact the Claimant sustained an injury does not alone establish the Claimant violated a safety rule.

The Carrier argues it has the right to establish and enforce rules for the safe conduct of its operations. The Carrier insists it must impose discipline upon an employee who violates such rules. The Carrier contends the record establishes the Claimant admitted he did not keep clear of an obstruction nor did he remove it. Instead, the Carrier insists the Claimant straddled the panographic arm to lift and carry the tie guide cylinder.

Safety Rules 3358(b) and 3361(a) are set forth below:

"When handling material:

Keep clear of holes, slippery surface or
obstructions in order to prevent slipping,
falling or being caught by material.

When lifting material or other object alone or with
others:

Remove slipping or tripping hazards when
practicable; otherwise take the necessary
precautions to prevent slipping or tripping."

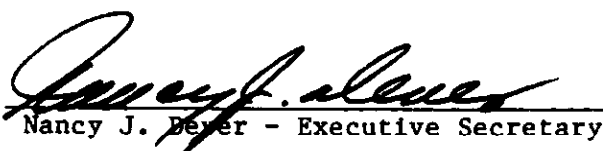
The record establishes the Claimant and another employee went to pick up a tie guide cylinder which was stored between Pits 4 and 5. The Carrier claims the Claimant should have used an overhead crane instead of lifting it with another employee. The Carrier introduced no evidence that the moving of a tie guide cylinder was only accomplished by the use of an overhead crane. There is simply no probative evidence in this record to support the charges as stated hereinabove. Accordingly, we will sustain the claim.

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 23rd day of June 1988.