

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

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

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

(1) The discipline (Written reprimand) imposed upon Repairman J. L. Price for alleged 'Failure to be aware of location of other objects and exercise necessary caution while handling material at Canton M.W. Shop, Canton, Ohio on September 6, 1983 at approximately 11:10 AM which resulted in a personal injury' was unreasonable, unwarranted, on the basis of unproven charges and in violation of the Agreement (System Docket CR-785-D).

(2) Said written reprimand shall be expunged from the claimant's personal record."

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 employees 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.

Claimant sustained a personal injury on September 6, 1983. An investigation was conducted on September 30, 1983, and subsequently a hearing was held after several postponements on December 28, 1983. The hearing was held in connection with the following:

"Failure to be aware of location of other objects and exercise necessary caution while handling material at Canton M.W. Shop, Canton, Ohio on September 6, 1983 at approximately 11:10 AM which resulted in a personal injury."

Thereafter, the Carrier issued the Claimant a written reprimand. The Organization disputes the above cited charges and argues the record establishes the Claimant was aware of the location of objects in his work area and exercised necessary caution. The Carrier insists the Claimant should have asked the repairman responsible for the switch tamper if it was operable or if he was moving heads.

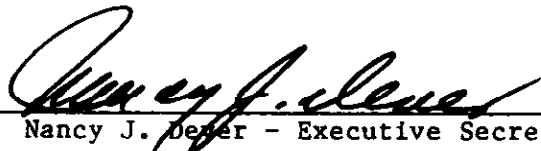
The record clearly establishes the Claimant was within the yellow lines demarking designated walk-aways. He was not working on the machine with extended wings; i.e., a wing extension on a torsion beam, the outer portion of which can be folded back. The Claimant did not move the wing extension into place. There is no evidence it was in place prior to the accident and that the Claimant ignored its position. He, in fact, was within the yellow, guidelines when he lifted the deck plates and hit his back.

This Board's review of the evidence of record confirms the Organization's claim that the Carrier failed to support its charges by a preponderance of probative evidence.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.