

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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 fifteen (15) days suspension imposed upon Trackman D. Williams for alleged violation of General Rule 22 and Rule 3377 was without just and sufficient cause and on the basis of unproven charges (System Docket CR-1101D).

(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 employe or employes involved in this dispute are respectively carrier and employes 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 June 20, 1984, Claimant picked up an air compressor at Creighton and drove it approximately ten miles to a work site. As Claimant was lifting and unloading the compressor with the boom it fell and was damaged. A hearing was held on July 9, 1984, to consider alleged violations of Rules 22 and 3377. Rule 22 required Claimant to properly inspect an air compressor before hoisting. Rule 3377 required Claimant to properly secure the air compressor in the boom truck before transporting it to the work site. Following the hearing, Claimant was notified by date of July 25, 1984, that he had been found guilty of violations of both Rules and assessed a fifteen (15) days suspension.

The Organization argues that the accident was the result of known inadequate and faulty equipment. Specifically, the boom truck lacked chains and binders to properly tie down the compressor prior to transport and the hook used to lift the compressor lacked a safety latch. The lack of a safety latch allowed the compressor to dislodge from the hook and fall to the ground.

It is the Carrier's position that the charges were proven with sufficient probative evidence and that Claimant was guilty as charged. The Carrier maintains that the assessed discipline was commensurate with the seriousness of the offense and appropriate based upon Claimant's past record.

A review of the record shows substantial evidence present to indicate that Claimant was guilty of violating Rule 22 in his "failure to properly inspect an air compressor before hoisting from the boom truck...." Both the Track Supervisor and Trackman noted for the record that they did not observe Claimant inspecting his equipment and connections prior to hoisting the compressor. The Board notes that Claimant did not climb up and check his connections prior to movement of the compressor. Claimant's own testimony confirms his lack of attention to the inspection of the hook. Claimant's defense that the hook lacked a safety latch is not relevant herein, where Claimant had known of the condition and failed to take careful action to avoid a serious problem. There is substantial probative evidence to warrant conclusion that Claimant did violate Rule 22 and is guilty as charged.

The Board has reviewed the charge that Claimant violated Rule 3377 when he failed "to properly secure the compressor in the boom truck before transporting it to work site." We find that Claimant took careful action in securing the compressor, but without the appropriate tie down equipment. There is no evidence of record that Claimant failed to exercise caution in his manner of securing the compressor in the bed of the truck or in his ten mile transportation of the compressor to the work site. The record substantiates that the truck was not equipped with cables or chains which could be used to secure the compressor. The Track Supervisor's testimony indicates that no tie down equipment was in the truck that Claimant brought to the site. Lacking any probative evidence that such equipment was available and that Claimant failed to use it, or that said equipment was unavailable and Claimant failed to report it, the Carrier's finding of guilt on this charge must be denied.

In view of the record before this Board, Claimant's fifteen (15) days suspension shall be reduced to eight (8) calendar days. Claimant shall be compensated for excess days in compliance with the Agreement.

A W A R D

Claim sustained in accordance with the Findings.

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.