

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28461
Docket No. CL-28932
90-3-89-3-472

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization
(GL-10396) that:

1. Carrier violated the effective agreement when, following an investigation on October 18, 1988, it assessed discipline in the form of ten (10) demerits against the record of Ms. Madeline M. Carrel without just cause.

2. Carrier shall now rescind the discipline assessed and shall clear Ms. Carrel's record of the charges placed against her."

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.

While alighting from a gondola, Claimant suffered a personal injury when she stepped onto tin cans lying on the ground in the yard. Following an Investigation, she was assessed ten (10) demerits. At the Investigation, it was established that it is not uncommon for there to be a problem with cans in the yard because of the cars of scrap handled there.

It is a maxim in this industry that the employees have a duty to perform their jobs in a safe manner. The Carrier, on the other hand, has a duty to provide a safe work place. We recognize that some locations are more prone to have hazards, such as yards where cars of scrap are handled. This does not, however, relieve either the Carrier or its employees of their respective duties with respect to safety. When an injury occurs under such circumstances, the Carrier must consider the conditions which might have

caused or aggravated the injury when it elects to impose discipline. Each such case must be decided upon its unique facts. In this case, we do not find that the Carrier gave consideration to the conditions in the yard at the time of Claimant's injury. Under the circumstances, we cannot conclude that Claimant's injury was the result of negligence on her part. Discipline, therefore, was not warranted.

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 19th day of July 1990.