

MARK S
3rd Div
7-16-93 Adpt.

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29689
Docket No. MW-29575
93-3-90-3-547

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former Seaboard
(System Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's decision to issue a letter of reprimand to Bridgeman F. L. Kee for his alleged violation of Safety Rules 10, 665 and 678 was arbitrary, capricious, based on unproven charges and in violation of the Agreement [FLK-89-60/12 (89-1008) SSY].
2. As a consequence of the violation referred to in Part (1) above, the letter of reprimand shall be removed from his personnel record and no reference shall be made thereto."

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.

Claimant is a Bridgeman assigned to Bridge Gang 6F66. He was engaged in bridge repair work at MP SF-284.7 on the Monroe Subdivision when this issue arose. This dispute pivots on the Carrier's decision to issue a letter of reprimand to Claimant for his alleged violation of Safety Rules 10, 665 and 678.

On May 25, 1989 an Assistant Foreman instructed the Claimant to tighten bolts on a concrete form under the aforementioned bridge. The Claimant complied with the Assistant Foreman's instructions, and walked out on the scaffolding which was constructed to afford the Bridgemen access to areas they would normally be unable to reach. As the Claimant proceeded out on the scaffolding, a board on the "H" beam tipped, causing him to lose his balance. Claimant fell approximately two and one half feet to the ground. Initially, Claimant thought he "was okay." However, shortly after the incident, his leg began to "swell up." The Assistant Foreman took the Claimant to a doctor for treatment. The doctor stated that Claimant had broken his leg as a result of the fall.

Carrier notified Claimant to attend an Investigation, as follows:

"You are hereby charged with violation of CSX Transportation Safety Rules 10, 665 and 678, which I am quoting below:

- Rule 10: Employees must watch where they step at all times. When working at night, employees must exercise utmost care to avoid the hazards caused by shadows resulting from use of lights.
- Rule 665: Before a ladder, scaffold, platform or elevated board is used, it must be checked to ensure that it is securely placed, capable of supporting the load, of adequate length and approved by proper authority. Cross grain or knotty lumber must not be used in any part of the device.
- Rule 678: Standing or attempting to stand on make-shift supports, such as boxes, barrels, chairs, stools, etc. in attempts to reach high places is prohibited."

Hearing on these charges will be postponed until you have been medically approved for return to work."

The Hearing was held on September 29, 1989. On October 11, 1989, Claimant was notified that:

"The first rule in the CSXT Safety Rules states, 'Safety is of the first importance in the discharge of duty.' Your record and past performance were taken into consideration in my decision in assessing discipline in your case. I feel that you have already suffered from the injury and learned that rule compliance is a must; therefore, it is my decision to assess you a reprimand, and you should consider this letter as such."

The Organization filed a claim stating that "the board slipped" and that the Claimant was "not guilty of any rule violation." The claim was handled up to and including Carrier's highest appellate officer. Subsequent to the Carrier's final refusal of the claim, it was submitted to this Board for resolution.

Initially, the Organization based its appeal of this matter upon a procedural objection because the individual who signed Claimant's charge letter was not at the Hearing. However, there is no language in the Agreement which states that the Charging Officer must have first hand knowledge of the dispute, or must serve as a witness in the disciplinary Investigation proceedings. Nor is there any showing of actual harm or prejudice to Claimant in this notice of charge. The Assistant Foreman was the Carriers' only witness, and was "on the scene" at the time of the Claimant's injury.

The Organization maintains that the Claimant was not in violation of Rules 10, 665 or 678. With relation to Rule 10, the Claimant testified that he was "well aware" of where the board was, and that he "was watching where I was going." Further, in connection with Rule 665, the Organization asserts that "the scaffold was erected by the bridge gang, inspected and approved by the foreman, and had been in place prior to this incident." According to the Organization, there is no showing that the scaffolding was improperly erected, and therefore, the Claimant was not in violation of Rule 665. Finally, Safety Rule 678 makes reference to "makeshift supports." The Organization submits that the scaffolding in question cannot be considered as such as it is commonly used to accomplish the very task which the Claimant was attempting.

For its part, the Carrier maintains that Claimant "had responsibility for the injury/accident." Carrier points to Claimant's own testimony in which he made the following admissions:

"Q. So it really wasn't attached or fastened on either end?

A. No sir.

Q. Rule 678 says standing or attempting to stand on a makeshift support and it goes on to say such as boxes, barrels, chairs, stools, etc. in an attempt to reach high places is prohibited, do you think that in your particular that standing on this board that was laying across an H beam trying to reach over head or look over head to look at those wedges do you feel like that in essence was in violation of rule 678?

A. I guess it was in violation.

Q. Yes sir, and the main thing that we have wanted to do here today is to examine what took place out there to help you to take a look at your injury and how it occurred in reference to the safety rules in hopes that you will have a better knowledge and understanding of where a rule was violated and in the future that you won't repeat the same type of incident, won't have a repeat of this same type of incident, do you feel like as a result of this injury and taking a look at the rules that you might would have done that same act a little differently in looking back?

A. Yes sir you learn a lot every time you have an accident.

Q. Yes sir.

A. You learn a lot from that of course you won't make that mistake no more and you look out for others, what we look out for each other at all times the best that we can but its a lot things I agree that we do it unaware of what we are doing, but it wrong in cramming to get the job did but a lot of times we caution each other and when we caution each other they don't do it they take heed at what you say and I do the same thing.

Q. And you do think that these rules are in the book to protect and look out for employees are they not?

A. Yes sir.

- Q. Had you literally complied with these two rules here dealing with standing on makeshift platforms or supports had the board been properly secured on both end to where it couldn't have moved would you have been injured?
- A. No sir."

* * * *

Further, the Carrier asserts that "safety is discussed every day prior to work," thereby eliminating any excuse for what occurred. Finally, the Carrier stated that a written reprimand is "the most lenient action under the Carrier's policy of progressive discipline," and was "entirely justified" and cannot be construed as excessive.

From the evidence presented to this Board, it appears that Claimant was less than prudent, as a consequence of which he sustained a broken leg on May 25, 1989. Although scaffolding is commonly used under circumstances such as these, and the aforementioned scaffolding was "approved" by the Foreman, this does not absolve Carrier employees from taking reasonable care to protect themselves from injury. Claimant's frank admissions that he did violate Safety Rules, but that he has learned a lesson from the unpleasant experience, effectively moot his claim that the letter of reprimand was not justified.

While it is unfortunate that any employee sustained an injury at all, the record supports Carrier's conclusion that Claimant was at fault. We find no violation of the Agreement, nor do we find the discipline assessed to be excessive. For the foregoing reasons, this claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Secretary To The Board

Dated at Chicago, Illinois, this 16th day of July 1993.