

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30013
Docket No. MW-30071
94-3-91-3-487

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

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

- (1) The letter of reprimand issued to Track Laborer M. A. Gibson for his alleged violation of Safety Rule No. 1 on July 10, 1990, was arbitrary, capricious, based on unproven charges and in violation of the Agreement [System File 4(14)(90)/12(90-797) LNR].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant Gibson's record shall be cleared of the charge leveled against him."

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 employe 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 July 10, 1990, Claimant was employed as a Track Laborer on a Timber Gang working in the vicinity of Hazard, Kentucky. During his tour of duty on that date, Claimant, along with three other employees, was in the process of loading a rail lifter onto a track buggy to transport the rail lifter to another location. During this procedure, the rail lifter slipped off of the track guides leading to the track buggy and derailed. The four employees proceeded to lift the equipment back onto the track guides and

completed the loading and transport of the rail lifter. During this operation, Claimant experienced pain in his neck and right shoulder. He made a timely and proper report of the injury and was given timely medical treatment at a nearby hospital.

Subsequently, by notice dated August 13, 1990, Claimant was instructed to appear on August 20, 1990, for an Investigation in connection with the personal injury sustained on July 10, 1990. Following the Investigation, Claimant was notified by letter dated September 12, 1990, that he had been found at fault for violation of Safety Rule 1 of the CSX Safety Handbook and was disciplined by assessment of a Reprimand.

We studied the transcript and considered the respective positions of the parties. On the basis of our review of the transcript, we do not find that the Carrier met the burden of proof required of it in a discipline case. The transcript contains no probative evidence to indicate that the Claimant was negligent or violated any of Carrier's safety procedures during the rerailing operation in question. The fact that an injury occurred during the Carrier accepted method of re-railing does not, ipso facto, mean that a Rule violation occurred. There is no indication in this record that Claimant was an otherwise unsafe employee. There is nothing to indicate that his work habits have previously been unsafe. The Assistant Roadmaster's testimony was, we believe, truthful and enlightening. He did not know how the Claimant became injured. There simply is no probative evidence in this record to support the conclusion that Claimant was negligent in any way in this incident. Therefore, this claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: *Catherine Loughrin*
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.