

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30255
Docket No. MW-30865
94-3-92-3-672

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

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

- (1) The five (5) days of suspension from Carrier's service imposed upon Welder D. E. Harrell, for alleged responsibility in connection with his personal injury sustained at Mile Post B 5.9 on August 7, 1991, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement. [Carrier's File 12(91-1258)MNN].
- (2) The Claimant shall have his record cleared of the charge 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 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.

At the time of the incident precipitating this case, Claimant was assigned as a Welder in Carrier's Track Subdepartment. During the afternoon of August 7, 1991, while he was using a maul to strike a track punch held by the Welder Helper, Claimant sustained a personal injury to his face when a sliver of metal from the punch embedded in his left cheek.

By notice dated August 20, 1991, Claimant was instructed to appear for an Investigation in connection with a charge reading:

"You are charged with your responsibility, if any, in connection with your personal injury at Milepost B 5.9, Chicago Division, Jeffersonville Branch, Jeffersonville, Indiana, at or about 1430 Hrs. on Wednesday, August 7, 1991."

An Investigation was held on August 27, 1991, following which Claimant was notified that he was assessed discipline of five days' actual suspension for failure to comply "with CSX Transportation Operating and Safety Rules."

The Organization raised a procedural objection concerning the statement of the charge in the Carrier's August 20, 1991, notice to Claimant. Rule 19 ("Discipline") of the Agreement between the Parties provides in pertinent part: "Prior to the hearing the employe will be notified in writing of the precise charge against him...." The Organization maintains that the notice sent to Claimant does not comply with Rule 19, but, rather, set the stage for a "fishing expedition" at the Investigation, at which time the Carrier sought some Safety Rule that would "fit the occasion."

The Board agrees with the Organization that the charge contained in the Carrier's notice lacks specificity. In this particular case, however, the description of the incident is sufficient to enable Claimant to infer the more specific charge from the wording "...your responsibility...in connection with your personal injury." Accordingly, Claimant was aware that the Carrier viewed the "accident" as something for which Claimant was, in fact, responsible -- presumably through some negligence on his part.

With respect to the merits of the case, however, the Carrier failed to show persuasively that Claimant's actions in any way contributed to the injury he sustained. Despite persistent, pointed questioning of Claimant and other witnesses at the Investigation, the Carrier has not convincingly shown that the incident at issue was other than an accident. It certainly has not shown that negligence or ignorance on Claimant's part precipitated the injury he sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.