

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30748
Docket No. MW-31288
95-3-93-3-327

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Illinois Central Railroad

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (letter of reprimand) imposed upon Mr. J. White for the alleged violation of Rule 304, in connection with the notice of hearing held, ". . . for the purpose of determining the facts and responsibilities for the personal injury you had at bridge 102.7 near Phillip, Mississippi on April 20, 1992.", was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement. (Carrier's File 197 M of W).
- (2) As a consequence of the violation referred to in Part (1) above, the letter of reprimand shall be removed from the record of Mr. J. White and his record shall be cleared of the charges 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 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.

On April 21, 1992, Claimant was notified of an Investigation, to be held May 1, 1992, "to determine your responsibility if any for the personal injury you had at bridge 102.7 near Phillip, Mississippi on April 20, 1992." The Investigation was held as scheduled, and on May 11, 1992, Claimant was advised that he had been found to have violated Rule 304, by not putting himself in a safe position, and was assessed a formal reprimand.

The injury occurred during the unloading of concrete pilings from a gondola car. A Pile Driver Operator operated a crane. One of the pilings began to swing, hit Claimant and pushed him away from the gondola. Claimant grabbed a piling and a fellow employee attempted to push the piling back to the car. Claimant lost his grip and fell approximately ten feet, injuring his back.

The Organization contends that Carrier failed to comply with Rule 33(a) which requires ten days notice of the Hearing "stating the known circumstances involved." The Organization argues that the notice did not refer to Rule 304 and that Claimant was unaware that Rule 304 was involved in the Investigation.

The Organization also argues that Carrier did not carry its burden of proving the alleged violation. The Organization maintains that Claimant performed his tasks in the usual and customary manner and placed himself in a safe position. The Organization attacks the testimony of Claimant's Supervisor, arguing that the Supervisor had no first-hand knowledge of the incident.

Carrier contends that it proved the alleged violation. Carrier relies on the Supervisor's testimony that it was Claimant's responsibility to ensure that the Pile Driver Operator was directly over the piling to ensure a vertical lift and that Claimant failed to do so. Carrier also argues that Claimant failed to use hand lines which he had been instructed to use when lifting any heavy loads.

The Board reviewed the Notice of Investigation and Rule 304. The notice listed the date and location of the accident and advised the Claimant that the Investigation would consider his responsibility, if any, for the injury. Rule 304 directs employees how to perform the task that Claimant was performing at the time of the injury. We find no violation of Rule 33(a).

The Board reviewed the record developed on the property. Claimant's Supervisor testified that it was Claimant's responsibility to direct the Pile Driver Operator to ensure that the lift was vertical. He further testified that standing on the side that Claimant was standing on and holding on with one hand while giving directions should not be done, and that Claimant should have used hand lines as he had been instructed to do in the past. The Board concludes that there is substantial evidence to support the finding made on the property.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of February 1995.