

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30817  
Docket No. MW-31240  
95-3-93-3-304

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  
(  
(Midsouth Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The discipline (letters of reprimand) imposed upon B & B Foremen R. F. Parker and H. K. Clark, B & B Carpenters J. D. Lockett, D. W. Watts, W. E. Shelvy and B & B Bridgeman S. Hines for alleged failure ' . . . to exercise care and judgement which resulted in personal injury of Sammy Hines on August 27, 1992 . . . ' in alleged violation of MidSouth Corporation Safety Rules C, H, M, 301, 309, 101 and 102 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement. (System Files 92-138-MW, 92-141-MW, 92-137-MW, 92-139-MW, 92-140-MW and 92-142-MW).

(2) As a consequence of the violations referred to in Part (1) above, the letters of reprimand shall be removed from the records of B & B Foremen R. F. Parker and H. K. Clark, B & B Carpenters J. D. Lockett, D. W. Watts, W. E. Shelvy and B & B Bridgeman S. Hines and their records shall be cleared of the charges leveled against them."

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 August 27, 1992, Claimants were raising a bridge. The bridge had been jacked up with a pile driver. A stringer had been inserted partially between the cap and the bridge. Claimants were in the process of completing the insertion of the stringer by hooking the cables from a burro crane to a piling and tightening up the cable when the stringer fell, striking Claimant Hines.

On September 8, 1992, Claimants were notified of an investigation, to be held September 15, 1992, concerning Claimants' responsibility in connection with the injury. The investigation was postponed to and held on September 24, 1992. On October 2, 1992, Claimants were issued reprimands for their responsibility for the accident.

The Organization argues that Carrier failed to prove that Claimants were responsible for the accident. The Organization maintains that several Claimants were not even able to see what occurred. With respect to the other Claimants, the Organization contends that the job was being performed in the usual manner and that there was no evidence that any of them failed to exercise proper care and caution.

Carrier contends that the evidence established Claimants' responsibility. Carrier argues that all employees working on the job were charged with responsibility to watch out for each other's safety. Carrier further argues that Claimant Hines failed to get out of the way in time. Carrier argues that the Claimants were given a fair hearing and that the discipline imposed was not arbitrary, capricious or excessive.

The Board has reviewed the record thoroughly and carefully. We are unable to find sufficient probative evidence to support the charges against any of the Claimants.

All of the witnesses agreed that Claimant Hines had to attach the tongs to the piling and hold them in place until the cable was tightened. All witnesses who saw the accident agreed that the stringer fell just as the cable was tightened, before Claimant Hines had time to get out of the way. All agreed that the operation was performed in the same manner as it had been for many years without incident. All who observed the bridge immediately before the accident testified that the stringer and cables were properly positioned and that there was no reason to believe that the stringer would fall.

Claimant Parker was in the pile driver and could not see what was happening under the bridge. Claimant Shelvy was operating the burro crane and could not see what was happening under the bridge.

Claimant Watts was the carpenter on top and could not see what was happening under the bridge. There is no evidence that any of these Claimants was even involved in the incident, much less responsible for Claimant Hines' injury.

Claimant Clark was relaying signals from Claimant Hines to Claimant Shelvy. Although he could see and hear Claimant Hines' signals, he could not see precisely what Claimant Hines was doing under the bridge. Claimant Lockett was under the bridge on the opposite side of Claimant Hines. Although he could see Claimant Hines, he had no control over the signals or the movement of the cable.

Claimant Hines testified that he hooked the cable tongs in the customary manner and, upon feeling the cable tighten, began to get out of the way when the stringer hit him. The only probative evidence against Claimant Hines is the fact that he got hurt. The mere fact of an injury does not establish culpability for that injury. See, e.g., Third Division Awards 26437, 26089. Accordingly, we must sustain all of the claims presented in this matter.

AWARD

Claims sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimants be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of April 1995.