

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31163
Docket No. MW-30662
95-3-92-3-450

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Duluth, Missabe & Iron Range Railway Company

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

- (1) The discipline (letter of censure) imposed upon B&B Mechanic R. J. Baker for alleged failure to take continuing precautions to prevent a fall on May 30, 1991 in alleged violation of Rules 1 and 17 was based on unproven and disproven charges (Claim No. 16-91).
- (2) The Claimant shall have Carrier's June 25, 1991 letter of censure and all mention thereof removed from his record."

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 May 30, 1991, the Claimant was repairing a cover plate on Bridge 68-A when he lost his footing and fell approximately ten feet. He received medical attention and was restricted from lifting over 25 pounds until June 7, 1991.

On June 7, 1991, the Claimant was notified that he was charged with violating Rules 1 and 11 of the General Rules and Code of Conduct and with Rule 17 of the Engineering Department Rules and Code of Conduct. After an investigation, the Claimant received a letter from the Carrier stating that it was determined during the investigation that the Claimant had slipped on taconite pellets that "may have been kicked onto the timber ballast retainer". The letter further pointed out that the Claimant was not guilty of carelessness as defined under Rule 11 but that he was in violation of Rules 17 and 1 for not taking precautions to prevent a fall. The Claimant was informed that the letter would be placed into his permanent record.

The Organization appealed the discipline arguing that the Carrier "presented no credible evidence" of the alleged violations. The appeal was denied.

This Board has reviewed the evidence and testimony in this case, and we find that the Claimant was guilty of failing to properly take the precautions that were necessary before beginning work on the date that he was injured.

On May 30, 1991, the Claimant was involved in securing a coverplate on an approach to a bridge when he lost his footing, fell, and injured himself. The Claimant admitted that he slipped on the taconite pellets. Furthermore, the Claimant admitted that he had not cleaned off the pellets from the top of the ballast retainer on the date that he fell. The Claimant testified at the hearing that he had swept pellets off the work area two days prior to the accident, but that he had not cleaned the pellets off the top of the ballast retainer on the date of the accident. The Claimant also testified that it was possible that there could have been pellets there while he was performing the work.

This Board agrees with the Organization's position that just because an accident occurs, it does not mean that a Carrier can issue discipline. In this case, however, there is sufficient evidence to support the Carrier's position that the Claimant violated the rules. Carrier Rule 17 states, in part:

"All safety devices available to prevent slipping and falling must be used as prescribed. Particular care must be exercised to prevent falls while working on snow or ice or pellets"

In this case, the Board must find that the Claimant did not use "particular care" when he only swept up the pellets two days before the accident. This Board understands that the Claimant testified that he cannot clean up all of the pellets because they

are all over the place; but by not sweeping for two days, we find that the Claimant did not take sufficient precautions and, therefore, contributed to his own injury.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

In this case, the Claimant received a letter of censure for his wrongdoing. That is about the least amount of discipline that one can receive. This Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD

Claim denied.

ORDER

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 26th day of September 1995.