

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31429  
Docket No. SG-32092  
96-3-94-3-492

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Co. (SP)"

Claim on behalf of K.D. Hurley for removal of a letter of discipline from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it failed to provide the Claimant with a fair and impartial hearing and placed a letter of discipline in the Claimant's personal record following an investigation conducted on October 1, 1993, without meeting the burden of proving its charges 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 August 25, 1993, Claimant was employed as a signalman when he sustained an on-the-job injury at the Carrier's Tower 47 at El Paso, Texas.

On September 3, 1993, the Claimant was instructed to attend a hearing on September 8, 1993, to determine the facts in connection with the personal injury that was sustained on August 25, 1993. After several postponements the Investigation was held on October 21, 1993. As a result of the Investigation, Claimant was given a personal record memorandum for his violation of Rules 1 and 1.1.5.1.

The Organization argues that the memorandum should be removed from the Claimant's record because the Carrier failed to prove the Claimant violated the Rules.

The record of the Investigation reveals that the Claimant along with the signal maintainer was removing gate material from Tower 47 at El Paso. In order to remove the material the Claimant used a plastic milk crate and a rail rod to stand on. The rail rod has wheels. While removing the material the Claimant lost his balance and fell off the milk crate twisting an ankle. The record is void of any evidence that the Claimant or the signal maintainer attempted to locate a ladder to use. The Rules the Claimant was found to have violated read as follows:

"1. Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury."

"1.1.5.1 When performing any type of work, proper, and approved tools for the work must be used and then only in accordance with safe practice."

Using a plastic milk crate and a rail rod with wheels to stand on while removing gate materials from the rafters certainly violates the above cited rules.

This Board finds no basis to change the discipline assessed in this case.

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 21st day March of 1996.