Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD THIRD DIVISION

Award No. 31550 Docket No. MW-32114 96-3-94-3-513

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

(Brotherhood of Maintenance of Way Employs <u>PARTIES TO DISPUTE:</u> ((Chicago, Central and Pacific Railroad Company

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

- The Carrier's decision to issue Trackman F.E. Castle a disciplinary letter of censure dated September 10, 1993, for alleged violation of Safety Rule 1, in connection with an injury sustained on August 16, 1993 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement.
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall have the September 10, 1993 letter and any reference concerning the alleged Rule 1 violation expunged from his personnel file."

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.

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This claim arose because the Carrier determined that the Claimant did not perform his duties in a safe manner when he injured himself. As a result, the Claimant was issued a disciplinary letter of censure.

The Claimant and another employee were assisting a fork lift operator in the loading of ties. During this process, he injured his back.

The Board finds that the Carrier met its burden of proof in this case, as shown by the Claimant's own testimony. The charge before the Board was that the Claimant failed "to properly plan and perform work, and exercise care to prevent and/or avoid injury on Monday, August 16, 1993.

In the transcript of the Investigation held on this matter Claimant acknowledged culpability in the matter at issue. Accordingly, the Board has no recourse other than to deny the claim.

AWARD

Claim denied.

<u>ORDER</u>

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 25th day of July 1996.