

*Accident -
- itself not proof of
negligence.*

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31912
Docket No. MW-32287
97-3-95-3-103**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE:
(Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) day suspension] imposed upon Messrs. T. F. Rogers and D. H. Brumley for alleged violation of General Notice Rules B, E, L, N, 681 and Rules 320 and 692 of the Maintenance of Way and Signal Department, in connection with a personal injury sustained by Mr. D. H. Brumley on May 26, 1993, was unwarranted, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's Files 013.31-475 and 013.31-476).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants shall be reimbursed for all time lost 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 May 26, 1993, the Claimants, Track Laborer Brumley and Foreman Rogers, were loading kegs onto a Carrier-owned truck. After the Claimants had finished and gone to their respective homes, Claimant Brumley began to favor his back, notified Extra Gang Foreman Walters, and then proceeded to seek medical attention. The following morning he was taken to a doctor's office by Roadmaster Bonnet at which time the Claimant completed a personal injury report.

On June 14, 1993, the Claimants were notified by the Carrier to appear for a formal Investigation "in connection with an incident that occurred on May 26, 1993...in which David H. Brumley allegedly sustained a personal injury...."

After the Investigation, it was determined that Claimant was guilty of violating General Notice, Rules B, E, L, N, 681 and Rule 320 and Claimant Brumley was guilty of General Notice, Rules B, E, L, N, 681 and 691. Both Claimants received five day suspensions.

The Organization filed the instant claim contending that the Claimants did not receive a fair and impartial hearing pursuant to Rule 13 of the Agreement.

The Carrier argues that it complied with all of the requirements of Rule 13 and the procedural claim is without merit.

The parties being unable to resolve the issue, this matter comes before this Board.

This Board has reviewed the procedural claim raised by the Organization and we find it to be without merit.

With respect to the substantive issue, this Board has reviewed the record and testimony in this case and we find that the Carrier has failed to meet its burden of proof that the Claimants were in violation of rules justifying discipline when they were involved in an incident that led to a personal injury on May 26, 1993. Therefore, the claim must be sustained.

This Board has held on numerous occasions in the past that simply because an accident occurs does not justify the issuance of discipline unless there has been a proven

violation of the rules. In this case, the Claimants were charged with a number of rule violations. A review of those rules and the transcript in this case makes it clear that none of those rules was violated. An accident did occur, but that does not necessarily justify discipline. The Carrier has not met its burden of proof, and the claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) 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 4th day of March 1997.