

*accident / injury
not under / neg*

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31919
Docket No. MW-32373
97-3-95-3-227**

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:(
(Chicago, Central and Pacific Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (letter of censure) imposed upon Mr. H. H. Nuemann on May 23, 1994 for alleged violation of Rules 1.1 and 25.5 for failure to maintain balanced position to avoid fall on April 21, 1994 was arbitrary, unjust, unwarranted, unreasonable and in violation of the Agreement.**
- (2) As a consequence of the above-stated violation, the Claimant shall receive the benefit of the remedy prescribed by the parties in Rule 35(g)."**

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 were given due notice of hearing thereon.

On April 21, 1994, Claimant sustained a personal injury to his right shoulder after the tie tongs he was using to move switch ties slipped causing him to fall. Claimant reported the injury to the Carrier, but declined immediate medical attention. Claimant was instructed to contact the Carrier if he required medical attention later that same evening. Claimant did visit the emergency room on the evening in question on his own.

On May 2, 1994, the Claimant was notified to appear for a formal Investigation in connection with his alleged failure to properly plan and perform his work, exercise care and be alert and attentive to prevent and/or avoid an injury to himself. The Hearing was held as scheduled and the Claimant was found guilty of failing to maintain a balanced position so as to avoid a fall on April 21, 1994. As a result, the Claimant was assessed a disciplinary letter of censure.

The Organization took exception to the discipline and filed the instant claim on behalf of the Claimant contending that he was never really notified of any specific Rule violation. Furthermore, the Organization argues that the Claimant performed his work properly.

The Board reviewed the evidence and testimony in this case and we find that the Carrier has not met its burden of proof that the Claimant acted improperly or in violation of any Rules when he was injured on the date in question. The Carrier did not provide any evidence to show that the accident was avoidable or how the Claimant could have acted differently in order to prevent the accident.

This Board has held on numerous occasions in the past that an injury in and of itself does not represent evidence that an employee injured on duty was acting in a careless or unsafe manner or in violation of the Rules. The Carrier must come forward with specific proof to show that the Claimant acted in violation of Rules or negligently in order to justify discipline. In this case, the Carrier has not met that burden.

For all of the above reasons, the claim must be sustained. The letter of censure shall be removed from the Claimant's record.

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.