

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31920
Docket No. MW-32409
96-3-95-3-280

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 Employees
(The Kansas City Southern Railway Company
(former SouthRail Corporation)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The three (3) day suspension imposed upon Machine Operator E. Parkman for alleged violation of Mid-South Corporation Safety and General Conduct Rule C, in connection with the personal injury sustained on June 22, 1994, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (Carrier's File 013.31-493 SRL).

(2) As a consequence of the above-stated violation, the Claimant shall be '*** made whole in accordance with RULE 33(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.

*accident /
not under fire*

Parties to said dispute were given due notice of hearing thereon.

Claimant E. Parkman has been employed by the Carrier for 23 years and at the time of this claim he was assigned as a Machine Operator on Tie Gang 155.

On June 22, 1994, Claimant was placing tie plates under a rail that was being raised by a rail lifting machine when he sustained an injury to the middle finger of his left hand. Claimant later was notified to appear for a formal hearing to determine his responsibility, if any, in allegedly not exercising care and good judgment while performing his assignment on the date in question. Following the hearing, the Claimant was notified that he had been found guilty of violating Rule C and, therefore, was being suspended for three days.

The Organization filed the instant claim contending that the Carrier failed to present any credible evidence to justify its charges that the Claimant had been careless in the performance of his duties. In addition, the Organization argued that the Carrier did not charge the Claimant with any specific rule violation.

The parties being unable to resolve the issue at hand, this matter has come before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant was guilty of violating any of the Carrier's safety rules. The record reveals that the Claimant performed his work in the same manner that he always did, and that there was no action on his part that was in violation of General Conduct Rule C.

This Board has held on numerous occasions that just because an accident occurs involving an employee does not mean that there was a rule violation or negligence indicating that the Claimant deserved discipline for the accident. It is interesting to note that the record reveals that the Carrier has subsequently provided a new tool for the employees to use during the performance of their work. It is conceivable that had that tool been available to the Claimant at the time of the accident that this matter may never have taken place.

Because the Carrier has failed to meet its burden of proof that a violation of the rules occurred, this claim must be sustained. The three day suspension of the Claimant shall be removed from his record, and he shall be made whole.

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.