

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31921
Docket No. MW-31452
97-3-93-3-440

The Third Division consisted of the regular members and in addition Referee Nancy F. Murphy when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (letters of reprimand) imposed upon B&B Helpers L. K. Renick and J. M. Taylor, for alleged violation of Rule L of the Rules and Regulations for the Maintenance of Way and Signal Department, in connection with an injury sustained by Mr. Renick on November 18, 1991 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File 013.31-454).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants shall have the letters of reprimand and all reference thereto removed from their records and they shall be compensated for all wage loss suffered as a result of their attending an investigation held on January 6, 1992."

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.

L. Renick and J. Taylor (Claimants) were regularly assigned as Bridge and Building (B&B) Helpers on B&B Gang 680, working under the supervision of B&B Foreman Cagle. On November 18, 1991, Claimants were working at Mile Post 96.2, near Eve, Missouri, driving wooden wedges between chains and bridge pilings, when Claimant Renick sustained a personal injury, i.e., a fracture of the index finger of his right hand.

On December 6, 1991, Claimants were instructed to appear for an Investigation in connection with: "... the facts and determine your responsibility, if any, in connection with the incident that occurred November 18, 1991, when B&B Helper L. Renick allegedly sustained an occupational injury."

The Investigation was postponed and held on January 6, 1992, during which Mr. Renick reported the following:

- "Q. There were two wedges that was involved between you and Mr. Taylor, right?
- A. As I remember there were two of them under there.
- Q. Two involved, and he was hitting on one and you were holding both the wedges?
- A. No, I was only holding one of them.
- Q. What position on that wedge did you have your hand?
- A. I had my hand on the wedge pushing up on it from the bottom of the wedge to keep it from slipping back down because every time he hit it, the wedge would slide back down and fall out. Every time that he would hit the wedge that he was beating on.
- Q. In other words, as he was tightening up the other wedge, this wedge would try to fall out and you were trying to hold it in place?
- A. Right. It had done fell out 2 or 3 times and I was trying to keep it from falling back down.
- Q. Okay. As he was hammering on this other wedge and you were holding the wedge up that you had your hand on, did he give you

any indication that he was going to strike the wedge that you were holding with the hammer?

A. No sir, he didn't, or I would have moved my hand.

Q. Is it normal to strike one wedge and then the other one or do you just try to knock one in?

A. It could go either way....

Q. You did have your work gloves on, I'm sure? Is that right?

A. No, I did not. And the reason I didn't have them on is because we had climbed up on the pilings and those pilings were wet and my gloves were muddy and wet. I had taken them off and laid them on the scaffold."

Subsequent to the Investigation, each of the Claimants were notified of the following:

"After a careful review and thorough examination of the transcript of the formal investigation, it is my decision that you were in violation of Rule 'L' of the Rules and Regulations of the Maintenance of Way and Signal Department, effective July 4, 1982, as revised.

Accordingly, you are advised that discipline issued will be a letter of written reprimand enter (sic) into your personal record file."

Rule L states, in pertinent part:

"Constant presence of mind to insure safety to themselves and others is the primary duty of all employees and they must exercise care to avoid injury to themselves or others. They must observe the condition of the equipment and the tools which they use in performing their duties and if found defective, will if practicable, put them in safe condition, reporting defects to their foreman. Defective tools must not be used. Employees must inform themselves as to the location of structure or obstruction where clearances are close and must exercise caution at such locations to avoid injury...."

On March 10, 1992, the General Chairman submitted a claim on behalf of Messrs. Renick and Taylor premised upon these assertions:

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On March 10, 1992, the General Chairman submitted a claim on behalf of Messrs. Renick and Taylor premised upon these assertions:

- "1. Carrier violated certain rules of the Agreement, especially Rule 13, DISCIPLINE AND GRIEVANCES, in that this discipline is unwarranted and unjust.**
- 2. Claimants were performing their duties with 'utmost' attention to safety, however, the gang was not provided with safe and proper tools. Therefore, although Claimants may have been 'somewhat of a small part of a cause of an injury', they should be commended for being able to perform their duties without the required safe, proper and functional equipment.**
- 3. Claimants have over a quarter of a century of unblemished service between them."**

Carrier denied the claims, maintaining that:

"I do not agree with your statement that the Carrier does not supply safe and proper equipment, or that Carrier put Mr. Renick in an unsafe situation. If Mr. Renick was performing his duties with the utmost attention to safety he would not have had his hand under the wedge; he would have informed Mr. Taylor that he was holding the wedge with his hand and where his hand was positioned. I do not feel that Mr. Renick should be commended or rewarded for violating Rule 'L'."

Carrier further maintained that Rule 13 was not violated, in that:

- "1. Claimants were advised in writing of the cause for their disciplinary action;**
- 2. A hearing was held during which each of the Claimants were represented and allowed to present their case;**
- 3. A transcript of the hearing was furnished to the Organization, all in compliance with Rule 13 of the Agreement."**

Finally, Carrier noted that Claimants had attended a safety meeting on the very morning that the injury occurred, and asserted the incident would not have taken place had Claimants exercised appropriate caution.

After careful review of the record presented and Submissions of the Parties, we find that the evidence does not support the Organization's contention that: 1) Carrier violated Rule 13 of the Agreement; 2) Claimants were issued defective equipment; or, 3) The discipline assessed was unreasonably harsh.

With regard to the procedural issue related to Rule 13 of the Agreement, Carrier maintained that each of the parameters set forth in Rule 13 of the Agreement, concerning employee rights, was properly met. We did not find any discrepancies on this record regarding Carrier's treatment of Claimants's rights throughout these proceedings, nor did the Organization present any evidence in support of its contention.

Further, we did not find any showing that Claimants were expected to use equipment which was faulty. Clearly, safe performance of the work at issue requires an employees' undivided attention, in addition to clear communication. Although the injury was unfortunate, and "accidents" do occur for which there can be no blame placed, we find persuasive Carrier's argument that, in this particular case, the injury would not have occurred had Claimants communicated with one another.

Finally, in all of the circumstances, we cannot find that Carrier's assessment of a letter of reprimand to be unreasonable, harsh or excessive. It is indeed fortunate that the injury which Claimant Renick sustained was not of a more serious nature. Carrier has the right to expect each of its employees to exercise utmost caution in the performance of their duties. Based on the foregoing, this claim must be denied.

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 4th day of March 1997.