

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION****Award No. 32211
Docket No. MW-32529
97-3-95-3-435**

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The five (5) day suspension imposed upon employee H. Lincoln for his alleged responsibility in connection with a personal injury sustained by him on March 21, 1994 was unwarranted and on the basis of unproven charges [System File 21(27)(94)/12(94-802) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."**

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.

Claimant has been employed as a Track Laborer since June 6, 1973. On March 21, 1994, he was operating a pregauge machine and was in the process of removing a tie plate from the machine when it "slipped and fell" onto his left foot resulting in a small fracture to one of his toes.

On March 29, 1994, Claimant was directed to attend a formal Investigation regarding the injury. Finding that the facts supported and confirmed Claimant's culpability regarding the injury, Carrier assessed Claimant a five day suspension.

The Organization appealed Carrier's decision on the basis the Hearing Officer deprived the Claimant of a fair and impartial Hearing when he "abruptly cut off" the Claimant's representative during his closing remarks, and the record developed during the Investigation failed to support any notion that the Claimant was negligent with regard to the injury.

For its part, Carrier maintained that there was nothing contained in the Hearing transcript which would indicate that the Claimant's representative was not given "every opportunity" and extended "every courtesy" while representing Claimant. With regard to the merits of the dispute, Carrier noted that Claimant readily acknowledged that he was familiar with the "TEN AIDS TO INJURY PREVENTION," which reads, in pertinent part:

"Before handling materials or objects, determine the best place to take hold. Place hands in the proper position and take a grip to hold sufficiently to prevent the material or object from falling from the hands or getting out of control...."

In fact, there is no dispute that Claimant's gang recited the "10 A's to injury prevention" daily, and that Claimant customarily led the gang in the recitation of those Rules. Finally, Carrier pointed to the Claimant's own testimony in which he stated:

"Well, like I say, it just, according to the other plate it must have slipped some type of way out of my hand, uncontrolled and just fell on my foot."

At the outset, the Organization asserted certain procedural errors which it alleges deprived Claimant of a fair and impartial Hearing. We found no evidence in this record which would support that assertion. Nor was there any indication that the Hearing Officer cut off Claimant's representative during his closing remarks.

Regarding the merits of the dispute, a careful review of the record supports the Carrier's position that Claimant was culpable for the injury. Based on the evidence of record, including Claimant's forthright testimony, this claim is 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 17th day of September 1997.