

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32481
Docket No. MW-32541
98-3-95-3-447**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Duluth, Missabe and Iron Range Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (letter of reprimand) imposed upon Mr. P. A. Olson for alleged violation of ' . . . Rules 1 and 10, General Rules and Code of Conduct, and Rule 17, Engineering Department Rules and Code of Conduct by failing to properly plan your work to avoid slipping, resulting in injury to yourself on August 12, 1994.' was without just and sufficient cause and on the basis of unproven charges (Claim No. 35-94).**
- (2) As a consequence of the above-mentioned violation, the letter of reprimand shall be removed from the Claimant's record."**

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.

At all material times the Claimant was a Laborer working as a Class B Mechanic and had established approximately 22 1/2 years of service. On the day in question, August 12, 1994 the Claimant was to sweep the garage floor which was covered by dirt, taconite pellets, and stay dri. Before sweeping the floor Claimant chose to walk across the floor toward a claw bar so that he could remove the bar from the floor as an obstacle to sweeping. In doing so he slipped on the taconite pellets and strained his left elbow. Subsequently the Claimant was charged with various rule violations, some of which the Carrier ultimately deemed unsubstantiated, and was assessed discipline consisting of a letter of reprimand.

The Organization contends that the letter of reprimand should be disregarded because the Carrier created the hazard by allowing the garage floor to be in the condition it was in when Claimant was injured and because the record establishes that the Claimant was prudent in his planning and execution of the work. In reply the Carrier argues that the existence of dirt, stay dri, and taconite pellets are a common occurrence and so well-known to employees and management alike that on this property there is a specific Rule (Rule 17) requiring that employees must exercise "particular care" to prevent falls while working on pellets which also prohibits "climbing, stepping or jumping on loose material." Thus, the Claimant did not properly or adequately plan nor execute his work when he chose to remove the claw bar from the floor before clearing the area in part or in whole.

Upon review of the record we agree with the Carrier. The existence of the Rule cited above, as well as the apparent regular customs and practices on this property, clearly put the Claimant on notice that the prudent course of action was to sweep the area such that he would have a clear and safe path to the claw bar. Then he could have removed the claw bar and concluded the remainder of the sweeping. However, Claimant chose not to take this course of action and instead walked into the area with the pellets and fell. Under these circumstances we do not agree with the Organization that the Carrier disciplined the Claimant because he suffered an injury, but rather because he failed to take action that could have prevented the injury from occurring in the first instance.

We also note that before this Board the Organization makes a number of arguments that were not presented at the Hearing on the property. Accordingly, we will not address those arguments as they have not been properly handled on the property.

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 23rd day of February 1998.