

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32785
Docket No. MW-32494
98-3-95-3-397**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (entry of censure) imposed upon Sectionman S. S. Hughley for alleged, ‘ . . . violation of Rule 567 of the Burlington Northern Safety and General Rules for your failure to perform your duties in a safe manner, resulting in an injury to you, at or about 0920 hours, near Pawnee Junction Power Plant, on May 10, 1994, while assigned as sectionman, Brush Maintenance Gang, Brush, Colorado.’ was unwarranted, without just and sufficient cause and on the basis of unproven charges (System File C-94-S090-3/MWA 94-09-09AA).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant’s record shall be cleared of the entry of censure and of the charges leveled against him.”**

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 sustained a fracture to his ring finger when a piece of scrap rail tipped over on it. On the day of the injury, Claimant was up on Carrier's boom truck guiding pieces of scrap rail into the truck racks. The first piece was somewhat twisted and bent into an "S" shape. After loading the first piece, Claimant placed his hand on the rack to steady himself while the Boom Operator went for the next piece. The movement of the boom shook the truck causing the first piece of rail to tip over onto Claimant's finger.

The Organization challenged the Carrier's discipline of censure on two grounds: First, Claimant did not receive a fair and impartial Investigation. Second, the Carrier failed to sustain its burden of proof to justify the discipline.

The Organization's procedural objection must be rejected. Our review of the record reveals that the notice properly informed Claimant about the scope and purpose of the Investigation. More importantly, no objection was raised at the commencement of the Investigation Hearing.

Regarding Carrier's burden of proof, the record contains evidence that Claimant should not have had his hand on the rack. In addition, Claimant recognized the hazard associated with the instability of the first piece of scrap rail. Indeed, he asked his Foreman about the suitability of its position before the injury occurred.

Under the circumstances, we find the record to contain sufficient probative evidence to warrant the light degree of discipline imposed.

AWARD

Claim denied.

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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 September 1998.