

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35319
Docket No. MW-34198
01-3-97-3-696**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (withheld from service pending outcome of investigation and subsequent letter of reprimand) imposed upon Mr. R. K. Eoff for alleged violation of Rule 70.1 in connection with an injury sustained by Mr. W. Allen on March 7, 1996 was without just and sufficient cause and on the basis of unproven charges (System File D-245/1021517).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall receive the remedy prescribed by the parties in Rule 48(h).”**

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.

The record indicates that the Carrier issued a letter of reprimand, dated March 26, 1996, to the Claimant. The letter of reprimand provided, in pertinent part, that:

“... regarding charges that while working as Sectionman, on Gang 6633, on March 7, 1996, in Duncan, Oregon, at or near MP 248.50, you were not working in a safe manner when you pulled, jerked a track wrench out of fellow employee W. Allen’s hands, causing a personal injury to Mr. Allen’s right wrist, elbow and shoulder, your actions are in violation of Union Pacific Rules, 70.1, effective April 10, 1994.

70.1 Safety Responsibilities

Employees are responsible for their personal safety and are accountable for their behavior as a condition of employment. Employees must take every precaution to prevent injury to themselves, other employees and the public. Employees must report any dangerous condition or unsafe practice.

Employees must be aware of and work within the limits of their physical capabilities and not use excessive force to accomplish tasks. Good judgment is required in fulfilling job responsibilities safely.

Past practices that do not conform with the rules are unacceptable.”

Rule 70.1 constitutes a reasonable work Rule. The safety of employees, other employees, and the public constitutes a critical requirement of each member of the workforce. The failure to comply with such a reasonable work Rule provides a legitimate basis for the Carrier to initiate appropriate discipline.

The present record substantiates that the Claimant, who had over 20 years of seniority, failed to comply with Rule 70.1 by engaging in the referenced misconduct. For whatever reason, the Claimant decided to behave in a manner that led to the injury of a coworker. Such unsafe and avoidable action by the Claimant provided the Carrier with sufficient cause to issue the disputed letter of reprimand.

The record omits any indication that the Carrier failed to follow the procedural requirements concerning the imposition of the disputed discipline. As a result, the Award shall provide that the 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 16th day of February, 2001.