

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35581
Docket No. SG-35586
01-3-99-3-503

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Kansas City Southern Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

Claim on behalf of M. L. Loyd to have a letter of reprimand, removed from his record, and compensated for all lost wages, skill differential and expenses, as a result of an investigation held on January, 27, 1998, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when on February 3, 1998, Carrier imposed discipline against the Claimant without meeting its burden of proving the charges or providing him with a fair and impartial investigation. Carrier’s File No. K0698-5064. General Chairman’s File No. 986847. BRS File Case No. 11032-KCS.”

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.

On January 19, 1998, the Claimant sustained a cut on his forehead, which required seven stitches to close, while working in a signal bungalow at Sachse, Texas. The injury prompted the Carrier to direct the Claimant to appear for a formal Investigation in regard to the incident. The Notice of Investigation, dated January 22, 1998, read, in part, as follows:

"You are hereby instructed to be present in the Roadmaster's Office in the Fox Building, 11931 Shiloh Road, Garland, Texas 75228, Tuesday, January 27, 1998, at 1030 hours, for a formal investigation, to ascertain the facts and determine your responsibility, if any, in connection with an incident that occurred at approximately 1630 hours, on January 19, 1998, at Mile Post T-206.48, Sachse, Texas, in which Mr. Marty L. Loyd sustained a personal injury while working in Signal Building."

At the Investigation, the evidence established that the Claimant's injury occurred when he struck his forehead on a train detection unit mounted on the wall of the signal bungalow above the area in which he had spent about two and one-half hours connecting cables. The Claimant, who was alone at the time, admitted he was aware of the protruding train detection unit above his head and described the moment of injury as follows:

"After I was just completing wiring, I had a piece of what we call, a cover, that goes over some panduit that covers the wires. I was at arm reach and after snapping it on, I was in an angle, not directly beneath the unit. When I began to get off my knees and come straight up, I had struck the, not directly under, but grazed the outside corner edge, which is a 1/8" metal that has a sharp edge. The bottom is rounded, but the edge is the part that cut me."

When asked whether he felt he had enough clearance when he started to stand up, the Claimant testified as follows:

"Yes, ma'am, because I am at arm reach. I am short, I have short arms and I thought I was clear of the unit itself. Normally, I am and I have never struck it before."

Testimony by other witnesses established that, at the time, the Carrier had no Rule requiring the Claimant to wear a hard hat while working in the signal bungalow. The Claimant was wearing safety glasses, however, and testified the side shields on those glasses may have impaired his peripheral vision.

The following Carrier Safety Rules were introduced in evidence during the Investigation:

“Rule 1.1 Safety.

Safety is the most important element in performing duties. Obeying the (sic) is essential to job safety and continued employment.

Rule 1.1.1 Maintaining a Safe Course.

In case of doubt or uncertainty, take the safe course.

Rule 1.1.2 Alert and Attentive.

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.”

The Claimant testified he understood these Rules and stated he did not believe, in any fashion, that he had acted unsafely.

Concluding that sufficient evidence had been presented showing the Claimant had violated the above-quoted Carrier Safety Rules, the Hearing Officer, in a letter dated February 3, 1998, advised the Claimant that he was being issued a letter of reprimand that would be placed in his personal record file.

The Organization challenges the validity of the reprimand, contending, first, that the Claimant was denied a fair and impartial Investigation because the Notice of Investigation served on him did not cite the Safety Rules he ultimately was found to have violated. Secondly, the Organization argues that the Carrier failed to carry its burden of proof, because there is no basis for concluding the Claimant was responsible for the injury he sustained.

The record, in our judgment, supports a finding that the Notice of Investigation in this case was sufficiently precise for the Claimant and his representative to understand the nature of the charge and prepare a defense in regard thereto. Neither the Claimant nor his representative voiced any uncertainty about the matter before or during the Investigation, and the thorough manner in which they presented the Claimant's defense indicates they were familiar with the incident in question and the issues raised thereby. We are cited to no Agreement between the parties requiring specific Rule violations to be charged in Investigation notices, and the Safety Rules the Claimant was found to have violated are consonant with a charge questioning responsibility for his injury. Only if he had been found in violation of Carrier Rules unrelated to the incident under Investigation would we have cause for concern.

Turning to the issue of whether the Carrier satisfied its burden of proving the Claimant was responsible for his injury, we are mindful that under the disciplinary procedures established pursuant to the parties' Agreement, the Hearing Officer is the trier of fact and the one responsible for judging the credibility of witnesses and weighing the evidence. Unless the Hearing Officer exercises his/her authority in an unreasonable, arbitrary and/or capricious fashion, we, as an appellate tribunal, have no valid basis for substituting our judgment in regard to these matters.

Did the Hearing Officer exceed the bounds of her discretion in this case? We think not. The Hearing Officer could reasonably conclude, on the basis of the evidence presented, that the Claimant was responsible for the injury he incurred. He was not a stranger to the signal bungalow in question and had worked under and about the protruding train detection unit for over two hours prior to his injury, rising to a standing position some 10 to 12 times without bumping his head. If the Claimant had maintained a keener awareness of the location of the train detection unit and looked up before he rose to a standing position that last time, it is reasonable to conclude he would not have bumped his head and injured himself. The Claimant testified he was aware of the train detection unit above him, but he obviously was not alert and attentive enough when he stood up that last time. Instead, as his testimony indicates, he assumed he had sufficient clearance because he was of short physical stature and thought he was working at an angle and not directly under the train detection unit.

The assessment of minimal discipline, a letter of reprimand, does not seem unreasonable or unduly severe in this case. Its purpose will be well served if it causes

the Claimant - and possibly some of his fellow workers - to be more safety conscious in the future.

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 24th day of July, 2001.