

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35605
Docket No. MW-35137
01-3-98-3-878**

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

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (letter of reprimand) assessed Bridge and Building Foreman G. J. Walsworth for his alleged failure to comply with Rule 69.3 on July 14, 1997 was without just and sufficient cause, based on an unproven charge and in violation of the Agreement (System Docket MW-4912-D).**
- (2) As a consequence of the aforesaid violation, Bridge and Building Foreman G. J. Walsworth shall have the letter of reprimand removed from his 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.

The Claimant was charged with two Rule violations in connection with an injury he sustained on July 14, 1997. He scraped his right shin on the tongue of a compressor as he was alighting from the back bumper of a pickup truck while carrying a carton of bottled water. He sustained a cut or abrasion approximately one inch by one-quarter inch within a reddened area approximately two inches in diameter.

The first charge related to the Claimant's failure to observe and avoid obstructions while getting off of standing equipment. The second charge pertained to his delayed seeking of medical attention and late reporting of the injury. After the Investigation held August 13, 1997, the second charge was dropped. However, the Claimant was found culpable for the first charge.

Although there is sharp conflict in some of the key testimony, our review of the Hearing transcript does not reveal any significant procedural shortcomings in the conduct of the Hearing by the Hearing Officer. Moreover, albeit refuted by the Claimant, the record does contain substantial evidence in support of the Carrier's disciplinary action. While the Claimant maintained that his left foot slipped off the truck bumper before his right foot reached the ground, the Carrier's Bridge Production Engineer testified otherwise. According to the Engineer's testimony, the Claimant did not report any slippage of his left foot to have been a causative factor at the time of their initial discussion of the circumstances surrounding the injury. It was, therefore, within the province of the Hearing Officer to resolve the credibility issue resulting from this testimonial conflict. His finding in favor of the Bridge Production Engineer was permissible.

Given the foregoing considerations as well as the minimal penalty assessed, we have no proper basis for disturbing the Carrier's disciplinary action.

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 24th day of July, 2001.