

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35919
Docket No. MW-35722
02-3-99-3-697**

The Third Division consisted of the regular members and in addition Referee Nancy F. Murphy when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) days’ actual suspension] imposed upon Mr. G. Jacobs on April 21, 1998 for alleged violation of Safety Rules 65.3 and 66.3 while working as a welder on December 1, 1997 at approximately 8:15 A.M. when he sustained a personal injury and the alleged injury proneness (subsequently dropped) in connection with said injury, was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System Docket MW-5196-D).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. G. Jacobs’ record shall be cleared of the charges leveled against him and he shall be compensated for all lost wages, benefits and credits.”**

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 G. Jacobs established seniority as a Boutet Welder, and was assigned to a welding gang headquartered in Batavia, New York, under the supervision of Track Engineer J. Thoman, Track Supervisor P. Tresco and Welder Foreman F. Joya when this dispute arose.

On December 1, 1997, while removing a track grinder mounted on a wheel barrow frame from Welding Truck 53081 the Claimant sustained a personal injury to his back. The Claimant, who was unable to "pinpoint any movement which may have caused the injury," reported same to Foreman Joya. Because the Claimant felt that he could "work the pain out" he continued to perform his assigned duties, but was unable to "work the soreness out of his back." Prior to receiving medical attention, the Claimant completed the requisite statement of his morning activities, and submitted same to Track Engineer Thoman.

As a result, on December 11, 1997, the Claimant was instructed to appear for a Hearing in connection with the charges noted supra. The Hearing was postponed and subsequently held on April 8, 1997, after which the Claimant was notified that he had been found guilty as charged, and was assessed a 30-day actual suspension.

On May 5, 1997, the Organization presented a claim maintaining that the Claimant was not guilty of violating any of the Rules for which he was cited, and that the Carrier failed to prove that he did not properly inspect the equipment, or that the hook on the hoisting crane was an unapproved hook.

The Carrier denied the claim maintaining that the testimony elicited at the Hearing proved the Claimant violated Safety Rules 65.3 and 66.3 when he "failed to plan his work to avoid injury, failed to look for hazards, and failed to follow proper procedures when lifting a grinder weighing over 200 lbs. thereby causing lumbar strain and a reported injury." Although the Manager exonerated the Claimant regarding Charge No. 3, she asserted that the Claimant's proven guilt on the first two charges warranted the discipline issued.

The Rules for which the Claimant was cited state, in pertinent part:

“65.2 Inspecting Hoisting Equipment:

Inspect ropes, chains, hooks, and slings before using them. Perform monthly written inspections on hoisting equipment according to MW252.

66.3 Lifting Material:

Follow these precautions when lifting material:

1. Clear the path of obstructions and tripping hazards.
2. Check the object for grease, oil and sharp edges. Grip the object firmly at the most suitable point with the palms of your hands.
3. Test the weight of the load by tipping it slightly. If the weight is beyond the limit of your physical capability, do not lift the load. Get other employees to help you lift the load, or haul the material in several trips.
4. Position yourself to lift the object.
 - a. Place your feet about shoulder width apart with one foot alongside the object and one foot behind it.
 - b. Bend your knees and keep your back straight.
 - c. Draw the object close, keeping your arms and elbows close to your body.
5. Lift the object slowly using your leg muscles, not your back.
6. As you lift the object, maintain a firm footing. Avoid sudden movements. If you need to turn, turn your whole body. Do not twist your back.

7. If you completely lose control of the object, immediately move clear until the object comes to rest.”

With respect to Rule 65.3, the Carrier maintains that the Claimant did not properly inspect the hoisting apparatus and was unable to produce a Crane Inspection Report for the date at issue. For its part, the Organization asserts that the Claimant could not be expected to perform written inspections in accordance with MW 252 because he possessed no knowledge regarding same. However, according to Track Supervisor Tresco’s undisputed testimony, the driver of the truck is responsible for inspecting the hoisting equipment and properly reporting same. In that connection, the Claimant stated the following:

“Q. Mr. Jacobs, charge one states, your failure to inspect the truck mounted crane on the rear of the Conrail welding truck J3081X as required by Conrail safety rules and procedures. Mr. Jacobs, did you have a current inspection form for the rear mounted crane on the J3081X on December 1, 1997?

A. No.”

The Claimant’s testimony in this regard clearly demonstrates that he did not possess a crane inspection form for the incident date and essentially constitutes an admission that he did not inspect the crane while assigned to operate the hoisting equipment on the date of the incident. The assertion that the Claimant did not have the “proper form” is irrelevant. By his own admission, the approved hook could not be opened, and it was the Claimant’s responsibility to either obtain a proper replacement or get the swivel hook repaired.

With respect to Charge No. 2, the record evidence demonstrates that the Claimant improperly attempted to move the wheelbarrow over rough terrain and up a slight incline in violation of Safety Rule 66.3, part 3, thereby contributing to his injury. If the Claimant had tested the load as required by the Rule, he would have realized he needed help because of the weight of the grinder and the condition of the terrain and slope over which he was trying to push the grinder. In that connection, the Claimant admitted that:

“Q. Would you say that it was more difficult to wheel in the area where you were working when the incident happened?

A. Yes, because of the stone and there was snow on the ground and just a little bit rough terrain.

Q. So you had to push the wheelbarrow down?

A. I had to push it up a little bit because of a slight incline.

Q. At what time did you notice this pain in your back?

A. It was approximately 8:15.

Q. What were you doing with the grinder at that point?

A. When I started to push it up the tracks.”

Clearly, the Carrier has proven that the Claimant did not comply with Safety Rule 66.3, part 3, and that his failure to do so resulted in the personal injury sustained on December 1.1997.

Regarding the discipline assessed, the Organization maintains that when the Carrier opted to delete Charge 3, the 30-day actual suspension should have been reduced. However, premised upon the record evidence, including the Claimant’s own admissions regarding the incident, we do not concur. The Claimant failed to look for hazards and failed to follow proper procedures when lifting a grinder weighing over 200 pounds, thereby causing a lumbar strain and a reported injury.

Premised upon all of the foregoing, this claim is denied.

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 22nd day of January, 2002.