

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36032
Docket No. MW-35781
02-3-99-3-763

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

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employes**
(**Union Pacific Railroad Company (former Missouri**
(**Pacific Railroad Company)**)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (Level 2 requiring one (1) day alternate assignment to develop a corrective action plan] imposed under date of July 20, 1998 upon Mr. R. E. Duke for allegedly violating Union Pacific Rule 122.3.1, effective April 10, 1994, in connection with a personal injury while working as a bridge carpenter on April 22, 1998 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File MW-98-185/1154841 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall remove all references of this discipline from Mr. R. E. Duke’s personal record and in connection therewith he shall now be compensated at his respective rate of pay for any and all time he may have lost and for any incurred expenses.”**

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 commenced his employment on February 16, 1982 and holds seniority as a Carpenter in the Bridge & Building Subdepartment. The Claimant was working under the supervision of Manager Bridge Maintenance W. Meaux and B&B Foreman Rodriguez when this dispute arose.

On April 22, 1998, the Claimant was assigned to B&B Gang No. 9356 assisting in repairing a bridge located at Crosby, Texas, when he fell 12 feet. As a result, the Carrier notified the Claimant of the following:

“Please report to the Union Pacific Railroad Company on Wednesday June 3, 1998 for investigation and hearing on charges to develop the facts and place responsibility, if any, that while working as Bridge Carpenter on April 22, 1998, you allegedly failed to wear the proper safety equipment while on a scaffold over 12 foot high resulting in a personal injury to yourself, this is in possible violation of Union Pacific Rule 122.3.1 effective April 10, 1994.”

After two postponements the Investigation was held on June 23, 1998, following which the Claimant was informed that he had been found guilty of the charges. As a result, the Claimant was assessed with a Level 2 Discipline and required to attend a one day alternate assignment, with pay, to develop a Corrective Action Plan.

The Organization protested the discipline asserting at the outset that the Investigation was “not held as a fact finding vehicle, but solely for placing guilt on the Claimant.” Specifically, the General Chairman contended that the Carrier denied the Claimant his right to present certain Hearing witnesses.

With respect to the merits of the issue, the General Chairman emphatically denied that the Claimant had violated Rule 122.3.1, noting that the Claimant was wearing the requisite equipment, but may not have had it “hooked up” properly. Finally, the General Chairman asserted that:

“It is further our position that it is the Carrier’s responsibility to provide each and every employee with a safe place to work and the Carrier did fail to do this by the distribution of faulty and unsafe material, and this is responsible for the board breaking and the Claimant sustaining injuries.”

In its denial the Carrier noted that the Claimant was responsible for providing and paying his own witnesses, and further noted that although the Claimant was afforded the right to postpone the Hearing, he did not choose to do so.

Regarding the merits of the dispute, the Carrier stated that:

“Mr. Duke was assessed a Level 2 for not complying with Federal Railroad Administration laws and Union Pacific Rules. He was not hooked up when he was over twelve foot and was afforded all the tools to comply with the rules. All employees are responsible for their own safety and scaffold boards are to be inspected and tested before use. Any scaffold board could have been and should have been cut up and taken out of service by any employee, including Mr. Duke.”

Rule 122.2.1 states:

“Fall Protection is Required:

A form of fall protection is required when personnel are working 12 feet or more above the ground or water and the work is not between rails. Fall protection includes:

***Safety Harness**

***Framed scaffolding or staging *Handrails**

***Safety nets (installed and maintained by a certified safety net contractor)**

NOTE: If work is extensive and more than 25 feet off the ground, consider using safety nets for long-term projects, with approval of Chief Engineer.”

A review of the record reveals that on April 22, 1998, Gang 9356 was assigned to install chord bolts for new stringers on Bridge 342.44 on the Lafayette Subdivision. The

Claimant, who was wearing the requisite body harness (horizontal life line) completed drilling chord bolts on one side of the cap. However, as the Claimant prepared to go to the other end of the cap, he unhooked his lanyard from the cable and did not reattach it prior to stepping on the scaffolding which subsequently broke.

The Organization asserts that the scaffolding was not “properly” inspected. However, the record does not support that assertion. According to the Carrier’s undisputed testimony, the scaffolding was approved by both the FRA and OSHA, and all required inspections had been properly performed. In that connection, at the June 23 Investigation, the Claimant reported the following:

“Q. You mentioned a board breaking in your scaffolding. Was this board inspected prior to its use?

A. We inspect the boards when we got on them, to see if they’re cracked or broke, before we use them.

Q. Did you personally inspect this particular board?

A. Yes, sir. And we looked at all of them.”

With respect to the Carrier’s assertion that the Claimant violated Rule 122.1.3, Manager Bridge Maintenance Meaux stated the following regarding the Claimant’s injury:

“Q. Was Mr. Duke wearing the proper safety equipment to prevent him from falling, per the Chief Engineers instructions?

A. He was wearing, but he wasn’t hooked up.

Q. Was Mr. Duke properly tied off at the lifeline?

A. No.

Q. Did he give you a reason for him not being properly tied off?

A. Yes, sir. He stated he was going around the end of the cap to make a move to start drilling again.

- Q. And this would cause him not to be tied off properly?
A. No, sir. The horizontal lifeline runs horizontal on top of the caps. You can slide the lanyard across the cap itself and work your way around the cap.”

Finally, the Claimant admitted the following:

- “Q. Were you wearing all the proper safety equipment, per Chief Engineers instructions?
A. Yes, sir.

- Q. At the time of the incident, were you properly tied off?
A. No. As I have mentioned earlier, the reason I wasn’t tied off cause I had to go around the cap to rehook. What caused the accident is when the board broke. If the board hadn’t broke, it wouldn’t have happened.”

Clearly, the Claimant did not adhere to the parameters set forth in Rule 122.3.1 thereby injuring himself in the process of performing his assigned duties. Premised upon the record evidence, including the Claimant’s own forthcoming testimony, this 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 21st day of May, 2002.