

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38035
Docket No. SG-38941
06-3-05-3-390

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Springfield Terminal Railroad

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Springfield Terminal:

Claim on behalf of P. D. Jarzombek, for reimbursement for all lost wages and benefits, with his seniority unimpaired and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Article 19, when it failed to provide the Claimant with a fair and impartial investigation and then issued the harsh and excessive discipline of a 30-day suspension without meeting its burden of proving the charges as a result of an investigation held on June 24, 2004. Carrier's File No. S-04-01. General Chairman's File No. WHK-232-016-0604. BRS File Case No. 13143-ST."

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 received a 30-day suspension for negligently clipping his safety belt into his leather harness instead of the "D ring" of the pole he was climbing. This "unfortunate accident," as described by the Organization, caused the Claimant to fall from the 20-foot pole. The Claimant's injury was reportedly minor. The Organization first argues that his Hearing was not fair and impartial. The Organization also questions the decision to discipline and asserts that the discipline is ultimately harsh and excessive because the Claimant's actions were inadvertent and unfortunate, but not negligent.

The Claimant's position that he was not provided a fair and impartial Investigation is not supported by the record. Despite not providing any argument to support such a claim, the record is also devoid of any evidence to suggest the Investigation was handled unfairly or not impartially. The Carrier also states that the issue of the discipline being excessive or harsh was not raised on the property, and therefore, is not properly before the Board. We disagree. It is evident that the Organization's position has been that the discipline was "insult to injury" and thus harsh and excessive.

Tending to the merits of the case, the ordinary understanding of "negligence" as it is described in Webster's dictionary is "the failure to exercise the care that a prudent person usually exercises." It is the Board's determination that one would have to look far and wide to find a case more evidently demonstrating negligence. To suggest that a person who does not check to ensure that he is properly secured before leaning out and away from a ladder is not negligent is incredible. One can understand accidentally missing the D-ring, but it was negligent for the Claimant to not check his safety harness before leaning out. His failure to do so is the sole cause for the incident.

Finally, in discipline cases such as this one, it is well established that the Board's function is not to second-guess or substitute the Carrier's judgment for our own, but to pass upon the question of whether there is substantial evidence to sustain the Carrier's judgment. The record in this case is clear. Neither the Carrier nor the

Claimant question the fact that the Claimant failed to verify that he had properly secured himself before leaning out from the pole and falling 20 feet. In fact, the Claimant conceded that he was totally at fault for not listening to hear the harness "click" when one is properly connected to the D-ring. To the extent there is any concern about the reliability or appropriateness of considering the Claimant's statement in the Accident/Incident Report, the Board finds that the substance of the statement was corroborated by his testimony during the Hearing.

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 December 2006.