

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, St. Paul, Minneapolis and Omaha Railway that:

1. Carrier improperly and unjustly suspended Agent-Telegrapher J. L. Gotsky from service June 16 through June 30, 1958.
2. Carrier shall be required to compensate J. L. Gotsky for loss of earnings in the amount of \$200.28.

OPINION OF BOARD: Claimant, an Agent-Telegrapher was injured on June 4, 1958, while working at an assigned task of sweeping out a freight house. There is no dispute concerning the circumstances of the accident. The Claimant had finished sweeping the freight house and was closing the doors when he looked up to see whether the upper rails on which the door slides had come off (as they frequently had in the past). Stepping back to get a better view, the Claimant backed into a gang plank and tripped over it. To avoid falling on a cart behind the gang plank, he stuck out his right elbow, falling on and injuring it. The injury was treated by a physician and no lost time resulted.

After preliminary inquiry and notice, the Carrier conducted a formal investigation and as a result, assessed the Claimant a 15-day disciplinary suspension from service. The Employees claim that the suspension was improper and unjust and seek restitution to the Claimant for the earnings lost.

The record does not show the Claimant to have been guilty of any infraction of specific safety rules or to have been previously cited for any other violations of Carrier rules or to have been involved in any accident during the eight years of his employment prior to the instant occurrence.

The evidence does not show the Claimant to have committed an act contributory to the accident, other than the momentary, minor lapse of foresight and prudence entailed in not turning full around to see if any obstacle was in the way to impede his backing up to look at the door. This kind of negligence is within the minimal area of human fallibility and does not deserve to be regarded as having the dimensions of a culpable act of significant carelessness which the penalty presumes. The Claimant's presumption that there would be no impediment to another step back, is one which might well be made by very careful employees, fully sensitive to the needs of safety. The

risks presented by the possible presence of a gang plank, not usually there, should not ordinarily and necessarily be expected to arise in an employee's mind. The added fortuitous presence of a two-wheeled cart at that exact place was another unpredictable, not usually to be expected or to be looked for. The unusual combination of the extra step back, the gang plank lying there, the cart behind it, and the sudden necessity for the employee to brace himself against the fall, resulted in the injury.

Nor was it inevitable that the loss of balance which resulted from the impact against the plank, would result in a fall. The accident of the way in which the weight of Mr. Gotsky's body swerved was one more variable in the combination of circumstances which caused the injury to the Claimant's elbow and gave the incident the status of an "accident".

All these circumstances resulted in an occurrence, which while containing an element of human error, does not constitute the kind of mis-act which deserves to be responded to by the disciplinary penalty here imposed.

The record shows that the employees had been generally cautioned against unsafe behavior about a month before this incident. But no specific warning was directed toward the Claimant, and no particular point was made concerning the kind of situation which here occurred or the behavior of the kind involved therein. Nor does the record show any campaign or line of disciplinary impositions which would establish the kind of intense drive for self-consciousness against the particular circumstances here present which might justify the Carrier in an expectation of the extreme employee care which could avoid this kind of an accident or justify a penalty against an employee involved in it.

For these reasons, we find the Carrier acted in an arbitrary manner in imposing the discipline of a 15-day suspension on the Claimant. The claim must, therefore be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline imposed was arbitrary and without just cause.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.