

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE PITTSBURGH AND LAKE ERIE AND
THE LAKE ERIE AND EASTERN RAILROAD COMPANIES**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The discipline assessed against Boat Spotter Louis DeVincen-tis on September 15, 1966 was without just and sufficient cause and based on unproven and disproven charges.

(2) The charge against Boat Spotter Louis DeVincen-tis now be stricken from his record in accordance with Rule 34 (d).

OPINION OF BOARD: On June 16, 1966, the Carrier was unloading coal from river barges into rail gondola cars at Colona, Pennsylvania. Claimant, who was the regularly assigned boat spotter, was assisting with the spotting of the loaded barges at the unloading facility. Because of coal that had previously been spilled into the harbor, the barges could not be spotted against the landing, and hence were spotted approximately two or three feet therefrom.

Claimant completed his work in connection with the spotting of a loaded barge and proceeded to alight therefrom. He grasped an iron hook, which was fastened to the landing, for support and then stepped up from the barge onto a "catwalk" attached to the landing. As he stepped onto the catwalk, he slipped on some slivers of wood and coal, falling to the catwalk, thereby sustaining an injury.

Subsequently, he was notified that an investigation and hearing would be held and that he was being charged with a violation of Rule 4019 of the Safety Rules. The investigation and hearing were duly held and he was found guilty. He was given a five (5) day suspended sentence which has been charged against his service record. He requests this Board to expunge this disciplinary action from his record.

The evidence of record contained in the transcript is not persuasive insofar as Carrier is concerned and we refer specifically to testimony elic-

ited from a Carrier official, who, after hearing Claimant's testimony, stated that he had gotten off barges in the same manner as Claimant, and that it was a safe way to get off the barge. We do not believe that Carrier in this instance has sustained its burden of proof. We will accordingly sustain the claim as submitted.

Carrier has raised a jurisdictional question alleging that a boat spotter comes under the jurisdiction of the 4th rather than the 3rd Division. We find Carrier's argument interesting in this regard, but not convincing. Claimant is a Maintenance of Way employe, which, in our judgment, places him squarely under the jurisdiction of the 3rd Division. (See Award 16313, Engelstein.)

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.