

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20252
Docket Number CL-20255

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
(George P. Baker, Richard C. Bond, and Jervis
(Langdon, Jr., Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7328) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of 10 days suspension on C. A. Wansart, Bill Clerk-Key Punch Operator at the Carrier's Kenmore Yard in Buffalo, N.Y., Buffalo Division, Northeast Region.

(b) Claimant C. A. Wansart's record be cleared of the charges brought against him at the investigation on April 14, 1972.

(c) Claimant C. A. Wansart be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: Claimant was notified of an investigation in connection with his responsibility, if any, for a personal injury sustained by himself. After the investigation, a ten (10) day suspension was imposed based upon violation of Safety Rules 2308, 2305 and 1052.

The Organization urges that Claimant was never charged with the offense for which disciplined because the notification never mentioned the above cited safety rules.

Contrary to Carrier's urging, we feel that the Organization did raise the asserted discrepancy on the property. However, we feel that recent Awards on this property control. The charge gave Claimant notice that his conduct on the day in question was under investigation. Our review of the record does not suggest that he was misled. See Awards 19636 (Hayes) and 20143 (Blackwell).

A description of the events leading to the injury is best demonstrated by Claimant's testimony at the investigation:

"Q. At what time did you report for this assignment?

A. Approximately one minute to 11.

Q. Our records indicate that at 11:05 P.M. you sustained a personal injury. What was the nature of this injury?

A. A dislocated right big toe.

Q. What duties were you performing at the time you sustained this injury?

A. Job 2C, which on a Saturday and Sunday is a combination Bill Rack, Key punch.

Q. My question was, what duties were you performing?

A. I was going to check an inbound of Job 240.

Q. How did you sustain this injury?

A. When I first came in, the man I was to relieve, John Weber, told me that Job 240 was here and going to pull into the Yard, so I assumed there out, as I call it the Branch, so I figured I had enough time to get my coat off and get myself a drink of water. As I was at the water fountain I heard the ramble of the train. I asked one of the engineers out there working, and he told me that that was Job 240 coming into the Yard. I already had my pad and pencil so I went out toward the back of the building to catch the numbers. In the process of going to the back door as I shoved the door open I stubbed my toe, in which this made me lose my balance, falling to the ground.

Q. Did you slip or trip over anything in the process?

A. Yes, I hit the sill step that is inside the building in the back of Kenmore Yard.

Q. Was the door open or closed at the back of the hall?

A. The door was closed.

Q. Was the hallway lighted or dark?

A. At this time the hallway was dark.

"Q. Could the hallway have been lit?

A. Yes, without doubt.

Q. How could it have been lit?

A. By switching on the button at the end of the hallway.

Q. Were you walking or running at the time you went through the doorway?

A. It was more than a walk, but less than a run. It was more like a hurried pace.

* * * *

Q. How could this injury have been prevented?

A. I have no idea.

Q. Do you mean to tell me that you don't know how you could have avoided being injured?

A. No sir I cannot tell you, but if I had known of some way it could have been prevented, I would not have been hurt."

Carrier relies on the following Safety Rules:

"2305, Paragraph (a) When going through halls, passageways, around corners or up or down stairs, walk do not run."

"Rule 2308 While walking, look ahead to avoid openings, slipping, falling or tripping hazards."

"Rule 1052, Paragraph (g), When walking or standing for any purpose, look for and stay clear of slipping, tripping or falling hazards."

Rule 1052(a) "When walking or standing for any purpose, use light when required."

We do not question that a Carrier may promulgate reasonable rules of safety, nor do we deny that a violation of safety rules may constitute a serious offense. The rules cited above are appropriate and amount to little more than one would reasonably anticipate of anyone in exercising a degree of common sense.

While we are well aware of the long line of Awards by this Board stating that it is not our function to substitute our judgment for that of the Carrier, we are likewise aware of our responsibility to assure that Carrier substantiates its accusation by a preponderance of the evidence.

Claimant was the only witness at the investigation. We have thoroughly scrutinized his testimony with specific reference to the portion cited above.

We note that Claimant was pressed into activity immediately upon his assuming his duties. He had his pad and pencil in his hand before he took his coat off and took a drink of water. His haste of movement was motivated by a desire to properly perform his job. While that fact alone would not excuse negligent action, we are not able to conclude that the Carrier has demonstrated that he was negligent. He did not run, but walked hastily.

Carrier has stressed the fact that the hallway was dark. While we are certain that the parties who considered the matter on the property are well aware of the physical locations of the areas mentioned, the Board suffers a disability in that regard. We have searched the record in vain to ascertain if Claimant was required to pass through a dark hall in order to get to the "back door." Further, we note that the hallway could have been lit by "switching on the button at the end of the hallway." The record fails to advise us of the proximity of Claimant to the "end of the hallway." We are not advised if Claimant could have turned on the light before he entered a dark hallway, or if he had to pass through the dark hallway to the "end" in order to switch it on.

Upon the entire record, we are not able to conclude that Carrier has, on balance, submitted evidence which preponderates to its benefit. Under this record, we will sustain the claim.

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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1974.