

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22445
Docket Number MW-22363

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Seaboard Coast Line Railroad Company

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

(1) The Agreement was violated when Trackman Dennis Clement, Jr. was withheld from service on May 5 and 6, 1976 without a proper hearing as provided for in Section 2 of Rule 39 (System File C-4(13)-DC/12-39 (76-35) J2).

(2) The claimant's personal record shall be cleared of any reference to a rules violation in conjunction with his absence from duty on May 5 and 6, 1976 and he shall be allowed 16 hours' pay at his straight-time rate."

OPINION OF BOARD: The standard procedure for Claimant's section force each day - immediately after starting time - is a briefing by the Foreman concerning the work to be performed that day and a quiz on the safety rule of the day. On May 5, 1976, the Claimant was, admittedly, late, but the record is not precise as to how late. When he appeared, shortly after the briefing (but before the gang departed for their work location) the Foreman quizzed him as to the day's safety rule. The Claimant did not know the rule, and the Foreman sent him home. The Claimant did not report for work on the following day, but he did report on May 7, 1976, and he was permitted to work.

The Carrier emphasized, in the record, that the Claimant was not sent home because he was late, but because he did not know the rule of the day. Its position (essentially) is that failure to know the rule of the day or its content makes an employe unsafe. Further, the Carrier argues that it has the right to prevent an employe from working when it would render the work place unsafe. It states:

"It is standard procedure that if an employee reports for work with improper shoes or clothing, is sick, or in any other way physically or mentally unprepared to perform his duties that would jeopardize himself or others by being around moving trains and equipment, then he is not permitted to work."
(See Page 7, Carrier's Submission)

Certainly, we have no quarrel with that proposition. But, we do not agree, under this record, that a failure to know the safety rule of the day made the employee a clear and present danger to himself or to his fellow employees.

A logical extension of Carrier's position seems to suggest that all an employee need to do in order to work safely is to know the number of rules of the day and the contents thereof. Surely, safety is more than that; and the failure to know the rule of the day is not a fair assessment of an employee's safety factor. Such evaluations are presumably left to examinations, safety records and observations.

We agree with the Carrier that safety is extremely important and that the rule of the day program is an integral part of it. However, its purpose is educational, not evaluational.

The Claimant's failure to know the rule of the day does not automatically mean that he is unsafe to work. Rather, it suggests that he is not following instructions. But, if the Carrier felt the Claimant's actions were in violation of his responsibilities or of a rule, then it should have proceeded under the discipline rule and a hearing should have been held prior to a suspension. A hearing was not held, and therefore, the Agreement was violated.

We caution the Claimant that safety rules are for his benefit, and participation in the rule of the day program is an obligation. An inconsistent or lackadaisical performance in the program might well be proper grounds for discipline under different circumstances.

The claim for May 5 is sustained. The claim for May 6, however, is denied. It was not shown that the Claimant was absent on that second day due to improper discipline; but rather, his own volition.

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 Agreement was violated.

A W A R D

Claim sustained as to May 5, 1976.

Claim denied as to May 6, 1976.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauler
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1979.