NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22650
THIRD DIVISION Docket Number MW-22460

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Denver and Rio Grande Western
( Railroad Company

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

(1) The thirty (30) day suspension imposed upon B&B Helper P. P. Cannon was improper and without just and sufficient cause (System File No. D-19-77/MW-12-77).

(2) The record of B&B Helper Cannon be cleared of said suspension and he be reimbursed for all wage loss suffered in accordance with Rule 28."

OPINION OF BOARD: An investigative hearing was held on May 16, 1977 to determine claimant's guilt, if any, in connection with his alleged violation of Safety Rule "K" which is referenced hereinafter. "An employe who is careless of his own safety or that of others will not be allowed to remain in the service. Employes must not rely solely upon the carefulness of others, but must protect themselves when their own safety is involved."

Claimant was found guilty of the asserted offense and suspended from service for thirty (30) days, effective May 26, 1977. This disposition is appealed to us.

In the instant case, claimant had been ordered by his foreman to withdraw from the area from which he just removed the bolts from a guard rail. He complied with this instruction and positioned himself in the center of the track. When the Bantam Crane came in to remove the unsecured guard rail from the bridge it unexpectedly got caught and claimant reentered the area to release it. As he stepped down onto the slag between the end of the ties and the guard rail, the five foot second section of the guard rail gave way and he slipped and fell off the bridge.

Admittedly, it is regrettable that claimant was charged with a safety rule infraction after suffering a seventeen foot fall and a broken wrist. But the sum total of his deportment was manifestly inconsistent with the fundamental intent and purpose of safety rule "K". Claimant was an experienced B & B employe, who was presumptively mindful of the potential hazards of an unsecured guard rail. He was not instructed by his foreman to free the snagged section. When he took it upon himself to reenter a patently unsafe area, he placed himself in a dangerous situation. A Safety Rule, by definition, is not designed to proscribe wilfull infractions only, it also is carefully designed to address careless or indifferent behavior as well. It is the act rather than the motive which gives rise to the offense. The facts in this case establish that claimant acted in a precipitate and unsafe manner. He might have perceived the situation to be safe but it was plainly filled with risks. Unlike the time when he systematically removed the bolts from the guard rail in measured fashion, he reentered the area with the guard rail unsecured and the exact status of the sections unknown. His response, to be sure, reflected a genuine attempt to resolve an unforeseen problem, but when it is objectively examined within the realistic context of the inherent dangers, it was technically violative of Safety Rule "K". For these reasons and the importance this Board attaches to railroad safety, we will deny 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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1979.