

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24336  
Docket Number MW-24522

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Consolidated Rail Corporation (formerly The New York,  
New Haven and Hartford Railroad Company))

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

(1) The discipline (reprimand) imposed upon Trackman J. W. Clark for alleged responsibility for the injury sustained by him on May 14, 1980 was arbitrary, capricious, unwarranted and on the basis of unproven charges (System Docket No. NH-55).

(2) The reprimand referred to in Part (1) above shall be expunged from the claimant's record."

OPINION OF BOARD: Claimant J. W. Clark was employed as a trackman. He was regularly assigned as such to work in Stone's Yard under the supervision of Foreman J. Travers.

On May 14, 1980 the Claimant and Trackman Mike White were engaged in replacing two broken rails at Cedar Hill Yard. Subsequent events were related by the Claimant in the following quoted testimony:

Tr.p.2:

Conducting Officer Parola to Claimant Clark:

"Q. Can you tell us the nature of your injury and how you received it, in your own words?

A. On the morning of May 14th we had to go up to the East Hump, Cedar Hill Yard, and replace two rails because a derailment had occurred the day before. Just myself and Mike White was left to do the job. Sal Pilato, on the work train brought the two rails for us. They put the rails down and he left. That left me and Mike. We got one end of the rail tight up and I was getting ready to make gage, with the use of a lining bar I was trying to push the rail out to make gage. When I was doing that, Mike White was holding the other end out for me so it would not fall back. In the process of doing that I wrenched my back some way or another. I stopped then and I called Stone's Yard and I did not get any answer, nobody in the office, so I went back and proceeded to do what I could. Later on during the day John Travers came back and I informed him of what happened. That's the way it happened."

Because the Claimant sustained a personal injury, he was instructed to appear for a hearing on August 8, 1980, "To determine your responsibility, if any, for your personal injury which occurred on May 14, 1980, at approximately 11:45 A.M. at Cedar Hill Yard." and "To determine your responsibility, if any, for your alleged violation of Safety Rules 3000(a) and (b) and 3111."

The hearing was held as scheduled, following which the Claimant received a notice reading:

LETTER NO. 1:

"Office of the Division Engineer  
55 Frank B. Murray Street  
Springfield, Massachusetts 01103

August 15, 1980

Mr. John W. Clark  
131 Spring Street  
New Haven, Connecticut

Trackman  
Employee No. 718386

Dear Mr. Clark:

I have reviewed the transcript of your hearing held on August 8, 1980, at the Office of the Assistant Division Engineer in New Haven, Ct., in connection with the following charges:

1. 'To determine your responsibility, if any, for your personal injury which occurred on May 14, 1980, at approximately 11:45 A.M. at Cedar Hill Yard.
2. To determine your responsibility, if any, for your alleged violation of Safety Rules 3000(a) and (b) and 3111. Also, at the same time, a review of your prior safety record will be made.'

The testimony given at the hearing indicates that you are guilty and bear the responsibility for the injury sustained to yourself. The discipline assessed to you shall be a formal reprimand, and it will be made a part of your personal record.

You should review and become familiar with the Conrail Safety Rule Book and adhere to its requirements in order to prevent needless future injuries.

Yours truly,

/s/ R. W. Barnard  
R. E. Barnard  
Division Engineer

RWB/ljt"

Organization's position is summarized as follows: Claimant was disciplined for alleged responsibility in connection with the personal injury sustained by him in violation of Safety Rules 3000(a) and (b) and 3111 which are as follows:

SAFETY RULES

"3000. Injured employee must report immediately:

(a) Inform immediate supervisor, even though extended injury appears trivial. When a person in charge is not in immediate vicinity inform him at earliest opportunity but not later than quitting time on the day of occurrence.

(b) Obtain medical attention."

"3111. To use bar or lever:

(a) Place it securely with firm bearing under or against the object.

(b) Assume a brace position with firm footing; not sitting or standing on or straddling it.

(c) Have all parts of body in position that they will not be caught between it and other object.

(d) Grip it securely and move it slowly and steadily.

(e) Maintain ample watch of base and/or contact point so as to make any necessary adjustments.

(f) Use suitable block under bar, lever or raised object as is necessary."

The Organization further contends that, a review of the transcript will firmly establish the Claimant clearly complied with the provisions of Safety Rules 3000 and 3111.

In the opinion of the Board a review of the whole record reveals that the Carrier did not make the case and failed in its burden of proving a violation of the rules stated, 3000 and 3111. For want of clear proof the claim will be sustained and the reprimand imposed on the Claimant will be expunged from the Claimant's record.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of April 1983.

