

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25450
Docket Number CL-25522

Eugene T. Herbert, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Northeast Illinois Regional Commuter Railroad Corporation

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9882) that:

1) That Carrier violated the Clerks' Rules Agreement when it charged, held investigation and assessed discipline of three (3) days actual suspension to Employee C. L. Lundquist on February 11, 1983.

2) Carrier shall now be required to clear Employee C. L. Lundquist's record of all charges, investigation and subsequent discipline and compensate him for all lost time caused by such charges, investigation and discipline.

OPINION OF BOARD: On January 25, 1983, Claimant, while operating a lift truck, mishandled a telephone pole 46 feet in length resulting in scratches to the roof of an automobile and damage to a wall of Carrier's Diesel House building.

While Claimant's actions were clearly established by the evidence to have been the direct cause of the property damage in this case, there was no evidence adduced at the Hearing showing that he failed to adhere to a specific Safety Rule in the process of moving the telephone pole. While it appears that most of the damage could have been avoided had the pole been tied down, no Rule has been cited which would require such a procedure. Further, other poles which had not been tied down had earlier been moved in the presence of Carrier's Storekeeper, who testified that he did not instruct Claimant to tie them down.

Carrier's position appears to be that a Safety Rule must have been violated by Claimant or the accident would not otherwise have occurred. This Board cannot, however, affirm a finding of guilt based on conjecture, but only on evidence. There was no testimony, except Claimant's own, as to the handling of the wayward pole.

Under the circumstances, it is the Board's opinion that Carrier has failed to establish sufficient evidence of a violation of Safety Rules by Claimant as would merit a determination of guilt or disciplinary action in this case.

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

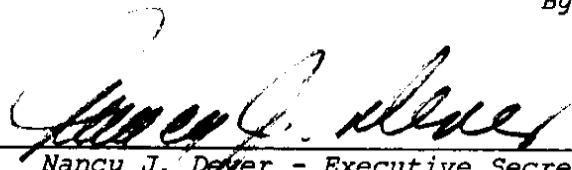
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.