

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25600
Docket Number MW-25817

James Robert Cox, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The thirty (30) days of deferred suspension imposed upon Track Laborer O. Rodriguez for alleged failure "to avoid injury to yourself" on March 23, 1983 was arbitrary, without just and sufficient cause and on the basis of unproven charges.

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss, if any, suffered.

OPINION OF BOARD: Track Laborer Rodriguez was given a 30-day deferred suspension in March, 1983 for failure "to avoid injury to yourself". At the time of his injury he had more than 11 years service with the Terminal Railroad.

The Track Foreman testified that, at the time of the occurrence, Rodriguez had been performing work as instructed, taking off four bolts and a joint in the course of changing the rail. Three bolts were out and the fourth one had only a few more threads before it would be removed. A jack operated by another individual in the crew slipped out beneath the rail upon which Claimant was working causing it to jump laterally and strike Claimant in the left foot. Claimant was, the evidence indicated, performing his duties in standard fashion approximately 2-1/2 feet away from the rail. The jack was positioned four or five ties away. There was no evidence with respect to the discipline accorded the employees operating the jack.

Although Claimant had a history of work-related injuries, the March, 1983 injury does not appear to have been caused by either his negligence, a violation of any work Rule or a failure to follow instructions. There is no evidence that Claimant was performing his work in an unsafe manner or that, under the circumstances of his assignment, he should have moved away from the rail as it was being jacked up.

The 30-day deferred suspension is to be removed from 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 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

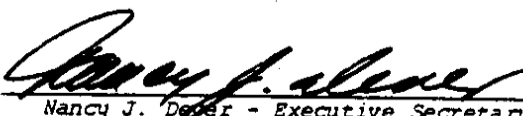
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.