NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26183
THIRD DIVISION Docket Number MW-26357

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Consolidated Rail Corporation

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

(1) The discipline (Reprimand) imposed upon Repairman D. L. Sullivan for alleged 'Failure to comply with Safety Rule #3030 and #3039 ... on October 3, 1983' was arbitrary, capricious, unwarranted and on the basis of unproven charges (System Docket No. 632-D).

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

OPINION OF BOARD: On October 3, 1983, Claimant, a Repairman, sustained an injury to his knee at approximately 4 P.M. in the Dyno Room area at the Canton, Ohio MW Repair Shop. According to Claimant, he was spraying engine heads and his right foot slipped or twisted on a smooth surface located in front of the steam box. He injured the muscles in his right knee. The surface to which Claimant referred was a metal strip approximately six feet long and 2 1/2 inches wide. The strip is next to an area with saw tooth grating. He reported the injury at 10 P.M. and received medical attention for it at a Hospital. The next day he went to another doctor who placed him on light duty for a week.

Claimant was notified to appear for a Hearing into the following charge:

> "Failure to comply with Safety Rule #3030 and #3039 at Canton N.W. Shop, Canton, Ohio, at approximately 4:00 P.M. on October 3, 1983, which resulted in a personal injury."

As a result of the Investigation, Claimant was assessed a written Reprimand. Rules #3030 and #3039 read as follows:

"WALKING

3030. Employees must walk, not run, keeping hands out of pockets and use established paths or routes when going to or from work locations. They must be alert to avoid tripping and slipping

hazards and walk around not jump across excavations, holes or open pits. If practicable, remove tripping or slipping hazard from path, walkway or work area; otherwise, promptly inform immediate supervisor of its nature and location.

3039. If necessary to look away from direction in which walking, stop while doing so."

Carrier maintains that Claimant failed (1) to be alert to possible slipping and tripping hazards, (2) to report the surface that he alleged was unsafe to his Supervisor, and (3) to look where he was going. Because of his disregard of Safety Rules, he injured himself. Carrier has a right to promulgate Safety Rules and enforce them to protect its employes, patrons, and the public. Claimant, Carrier alleges, was familiar with these Rules and the work area. Because Carrier later placed a tape on the metal strip after Claimant's injury, one cannot infer that the area was not safe.

The Organization insists that Carrier failed to provide any probative evidence to sustain the charges. The placement of a nonslip tape on the strip after Claimant's injury was an admission that the footing in the area was poor. The fact that Claimant sustained an injury does not, in itself, prove that he was responsible for the injury or that he violated any Rules. In the final analysis, the discipline imposed was unwarranted and excessive.

This Board has reviewed the entire record of the case, including the transcript of the Investigation. That record reveals that there was sufficient probative evidence at the Hearing to sustain a finding of guilt. Claimant was working in a steaming area, spraying engine heads. With the exception of the narrow metal strip, the floor in the area was covered with saw tooth grating to avoid slipping. Claimant was wearing safety glasses, a face shield, rubber gloves, safety straps, and steel-toed shoes. Clearly, he was working in an environment that he knew could cause serious harm to him if he did not display proper dilegence. We must assume that had Claimant exercised normal caution under the circumstances, he would have avoided injurying himself. As noted in Third Division Award 11775 (Referee Hall): "We cannot substitute our judgment for that of the Carrier and if there is any evidence which would justify Carrier in concluding that Claimant was not using the best judgment in conducting himself safely, it is not for us to disturb it."

Although it might be argued that in disciplining an employe who has sustained an injury, you are "hitting a man who is down," it is imperative for Carrier to send a message to others that carelessness or negligence on the job cannot be condoned. It is incumbent upon both Carrier and its employes to maintain a safe environment. Carrier cannot be faulted for seeking to avoid any further careless accidents by placing a tape on the metal strip after Claimant injured himself. It acted responsibly in this instance and issue should not be taken with Carrier for doing so.

Although it is regrettable that Claimant suffered an injury, given the fact that he was not alert to the hazards present in this situation, a letter of warning cannot be considered to be arbitrary or capricious.

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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of November 1986.