

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26352
Docket Number MW-26378

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The five (5) days of suspension imposed upon B&B Mechanic Irvin Wiley for alleged 'responsibility in connection with claimed injury on February 28, 1984, at approximately 11:30 A.M., in the Huntington Shops, Huntington, West Virginia' was arbitrary and on the basis of unproven charges (System File C-D-2257/MG-4614).

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

OPINION OF BOARD: The Claimant was advised to attend an Investigation on March 14, 1984, to determine facts and establish responsibility, if any, in connection with his alleged responsibility for an injury sustained on February 28, 1984, at the Carrier's Huntington Shops, Huntington, West Virginia. After the Investigation was held as scheduled the Claimant was advised on March 19, 1984, that he had been found guilty as charged and he was assessed a five (5) actual day suspension.

According to the record the Claimant suffered an injury on February 28, 1984, when he "... knocked the wind out of" himself shortly before Noon on that day when he fell from a small table on which he had been standing while helping install a dropped ceiling in one of the Carrier's offices. The table was approximately one and a half feet wide, some two and a half feet long, and less than three feet high. The Claimant was installing the ceiling with a fellow worker who was using a ladder. Although the Claimant appears to intimate in his testimony that there was a past practice on this property of using other than ladders for scaffolding for the type of work in question the record fails to establish this. The Structures Supervisor testified that he had "... heard that employes had been using" a table to stand on prior to the accident. But he never stated that he approved of such. Likewise the B & B Foreman could not testify for sure whether he had seen the Claimant's co-worker (who also admitted to having used the table to stand on to install the ceiling) stand on the table on the day in question as this Foreman went from office to office supervising the work. If this Foreman would have seen such the Board must conclude that he would have been remiss, given the Safety Rules at stake, if he would not have instructed this employe to stop using the table as a ladder. But it is never established that the Claimant's fellow worker was

actually seen by supervision using the table for a ladder. What the record does establish is that neither the Claimant nor his fellow worker advised supervision that there was apparently not a sufficient number of ladders on location on February 28, 1984 for all of the workers installing ceilings. The Claimant's fellow worker also testified that the table was "... not ... stable." Likewise, the Claimant admitted at the Investigation that he "... evidently ... must not have used good judgment" when he stood on the table in lieu of a ladder to do his assignment. According to the record the Claimant and his fellow worker could have been accommodated with a ladder if they would have made a request for one. The Structural Supervisor testified that a "... six foot ladder" was in the Shop which could have been used for the installation of an eight foot ceiling. Nowhere in the record is this testimony contested. As a result of the fall sustained by the Claimant he was sent to the Clinic on February 29, 1984, because he was complaining of a bruised back and because he was passing blood. He was subsequently returned to work but on a limited work status for seven days.

On the record taken as a whole which includes the Claimant's own testimony the conclusion is warranted that the Claimant was negligent and that he used bad judgment. The discipline assessed was reasonable.

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

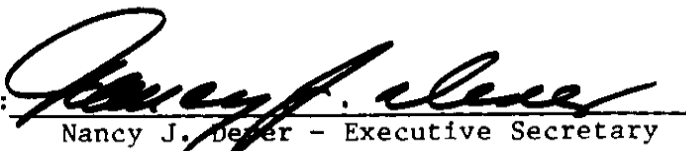
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.