

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26665
Docket Number MW-26534

Dana E. Eischen, Referee

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

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

(1) The discipline (written reprimand) imposed upon Repairman R. L. Miller for alleged 'Failure to be aware of and use necessary caution to avoid striking body on objects in immediate work area at Canton M.W. Shop, Canton, Ohio on 10/17/83' was without just and sufficient cause and on the basis of unproven charges (System Docket CR-784-D).

(2) Said written reprimand shall be expunged from the claimant's personal record."

OPINION OF BOARD: Claimant was employed by Carrier at the Canton, Ohio Maintenance of Way Shop. On October 17, 1983 he was assigned to repair a disabled tamper by removing and replacing the tamper bars. To accomplish this task it was necessary for Claimant to place the tamper on a stand and work under it. Upon crawling out from under the machine, Claimant stood up and accidentally struck his back on the edge of the machine.

Carrier cited Claimant for carelessness and, following an investigation, assessed his personnel file a letter of reprimand on the following charges:

"Failure to be aware of and use necessary caution to avoid striking body on objects in immediate work area at Canton MW Shop, Canton Ohio on 10-17-83 at approximately 8:45AM which resulted in a personal injury."

This Board has heard and decided a number of similar claims arising at this Canton, Ohio Maintenance of Way Shop in recent years. It should be obvious that each such case rises or falls on its own particular set of facts. But the Board has announced a number of guiding principles to govern such cases. There is no doubt that Carrier has a right and obligation to maintain a safe working environment. Nor can it be seriously contested that Carrier may resort to discipline of employees proven guilty of violating or negligently ignoring safety rules. It is incumbent upon Carrier, however, to prove that the injured employee was culpable or negligent before it may impose any discipline, even a letter of reprimand. See Third Division Awards 25872, 26183, 26267, 26341.

In the present case Carrier did not charge Claimant with any safety rule violation but rather with "failure to be aware of and use necessary caution." In laymen's language, Claimant was accused of plain carelessness because he injured himself by standing up too quickly. In lawyer's language, Carrier argued a res ipsa loquitur theory of the case, i.e., that the injury could not have happened in the absence of negligence. A thorough review of the evidence does not support Carrier's view of this matter. Not every mistake or injury automatically involves carelessness, negligence or inattentiveness to duty. The present case is readily distinguishable from those decided against an employee who plainly violated safety regulations. See Third Division Award 25872; and also may be distinguished from a case involving an employee deemed "accident prone." See Third Division Award 26183. We find no evidence in the present case that Claimant violated any safety rule, that he was "accident prone," or that he was careless or inattentive to duty. On the basis of all of the foregoing we shall sustain his Claim.

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

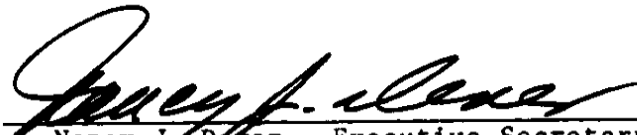
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.