

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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 five (5) working days of suspension imposed upon Repairman G. T. Vickers for alleged 'Failure to comply with Safety Rule #3111, at Canton M.W. Shop, Canton, Ohio at approximately 7:30 P.M., on November 30, 1983, which resulted in a personal injury' was without just and sufficient cause and on the basis of unproven charges (System Docket CR-783-D).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant is a repairman with seven years of service and no prior discipline. On January 27, 1984, he was issued a five (5) day suspension for violation of Safety Rule 3111. According to the Carrier, the Claimant injured his hand when, on November 30, 1983, the punch he was using slipped, and he hit his hand with a hammer. The Carrier believes the evidence clearly establishes the Claimant improperly attempted to remove a bearing cup from inside the Hub City gear box and should have known from previous mistakes, injury, and counseling that other options were available to safely perform his duties. The Organization views the record differently and insists the Carrier presented no evidence the Claimant's injury was the result of his charged violation of Safety Rule 3111.

Safety Rule 3111 states:

"Deliver blows with axe, adze, sledge, hammer or other tool in a manner that it will not catch upon or be deflected by other item."

This Board finds no probative evidence the above Rule was violated. The Carrier presented no witness to the charged violation, and we find the Carrier's retrospective second guessing of supposed viable alternatives to be in the nature of presumption rather than fact. In terms of fact, the Carrier's primary alternative; i.e., "welding the race", is again based upon presumption. We emphasize that there is no evidence that, after such a procedure, the use of a punch and hammer is not necessary.

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 June 1988.