

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(CSX Transportation, Inc.
PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

"(1) The Agreement was violated when the Carrier assessed L. F. Griffis a three (3) day suspension for violation of Carrier's safety rules. [Carrier's file 12 (89-805), Organization's file LFG-89-50].

(2) As a consequence of the aforesaid violation Mr. L. F. Griffis' personal service record be cleared of the incident and he be compensated for any loss resulting from the suspension if actually served."

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 employes 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.

Subsequent to an Investigation, the Claimant was suspended for three days for an alleged violation of Safety Rules. He received an injury to his back while lifting a heavy object along with a co-worker.

The Roadmaster who testified could offer no direct testimony, and his discussion with the Claimant after the incident is somewhat confusing. In any event, the dispute centers around the question of whether the Claimant actually bent his knees as is mandated by the Safety Rules. He stated that he did. The co-worker initially indicated that Claimant had failed to do so, but later stated, in the transcript of investigation, that he did not recall if the Claimant had bent his knees.

The Carrier noted that: "In this case, only two (2) employees were present and had any knowledge of what transpired. The question of which version of the events should be believed, was determined by the trier of facts."

Normally we might be inclined to agree with Carrier in reaching this type of a credibility resolution. But here, the witness believed by the trier of fact clearly contradicted himself regarding the position of Claimant's knees.

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 25th day of June 1991.