

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30665
Docket No. SG-30866
95-3-92-3-678

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (former L&N):

(a) Claim on behalf of Lead Signalman D. B. Little, account of Carrier's violation of the Signalmen's Agreement, particularly Rules 54 and 55, when it assessed him ten (10) days actual suspension for alleged violation of safety rules on April 30, 1991. Carrier failed to conduct a fair and impartial hearing, to prove the charges, and assessed excessive discipline, and held the disciplinary hearing outside of prescribed time limits; hence its actions constitute an arbitrary and capricious exercise of its right to discipline.

(b) Carrier should now be required to clear Claimant's record of any and all reference to the charge and restore all lost wages and benefits."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant is assigned as a Lead Signalman on Carrier's 7M39 Division Gang, with regular assignment of 8:00 A.M. to 5:00 P.M., Monday through Friday. On April 30, 1991, Claimant was performing assigned duties at Carrier's South Yard, in Birmingham, Alabama, when he suffered a personal injury in the course of loading signal equipment. A pry bar which Claimant was using to lever a piece of heavy equipment into a box car slipped and struck him with great force in the crotch. The injury resulted in Claimant's medical absence from service through June 1991.

Claimant's Foreman convened a "safety committee" to conduct a "preliminary investigation" with regard to the incident. The "committee" found that Claimant "was not performing his job in a safe manner," and that Claimant's accident occurred "as a result of improper use of the tool." However, the "report" of the committee was not made available on the property, nor was it submitted as evidence to this Board.

On May 7, 1991, Claimant was instructed to attend a formal Investigation on May 17, which was ultimately postponed until June 10. By letter dated July 8, 1991, Carrier notified Claimant:

"Upon review of the transcript from the investigation, the information and facts revealed clearly indicate that several rule violations occurred which contributed to this injury. Had you been following these Safety Rules, the injury would not have occurred. With proper positioning, had the bar slipped, it would not have hit you in the groin area. The bar should have been positioned to the side of your body rather than directly in front of you. Account of these violations, you are hereby issued an actual 10 day suspension."

Leaving aside the numerous procedural objections raised in this record, Carrier did not provide any actual proof of any violation of any Rules on the part of Claimant. Nothing in the record proves that Claimant was negligent or inattentive in the performance of the task. With the benefit of hindsight, Carrier and this Board can second-guess his body placement; but not every accident is the result of employee carelessness or incompetence. Nor are we persuaded by Carrier's argument that it did not discipline Claimant so much as remind him to position a pry bar differently in the future. The reminder Claimant received when the pry bar struck him in the groin is more than sufficient incentive for any man to avoid such a situation in the future. A disciplinary suspension in these circumstances was an unreasonable

addition of insult to injury.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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Dated at Chicago, Illinois, this 31st day of January 1995.