

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31145
Docket No. MW-31817
95-3-94-3-93

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

- (1) The discipline (dismissal and subsequent reinstatement without pay) imposed on Sectionman P. J. Vigil for allegedly violating Operating Rule 600 and Safety Rules 4000, 4001, 4005 and 4008, in connection with allegedly working in an unsafe manner which resulted in a personal injury to himself on June 15, 1992, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File D-183/930182).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the charges 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 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.

On June 15, 1992, Claimant, while loading rail, sustained a broken bone in his foot.

On June 19, 1995 he was served a notice of Investigation which reads, in pertinent part, as follows:

****On June 15, 1992, at approximately 1:35 P.M., while you were employed as Sectionman at MP 648.75, you were working in an unsafe manner which resulted in a personal injury to yourself, indicating possible violation of Maintenance of Way Rules, Block Signal, Cab Signal and Interlocking Rules, effective November 1, 1991, as well as Safety, Radio and General Rules for All Employees, effective October 1989.****

On July 17, 1992 he was dismissed from the service of the Carrier.

Effective November 9, 1992, Claimant was reinstated to service without infringing upon his right to pursue his claim.

The Employees have challenged Carrier's right to discipline on a three part procedural argument and the contention that Carrier failed to establish Claimant's culpability of the charges set forth in the Notice of Investigation.

The three part procedural requires attention. The first part of the procedural issue is that Claimant was not served with precise notice of charges in that no Rule or Rules were cited.

The Board finds that Rule 48-the Discipline Rule is silent on this point. Rule 48 covers three and one-half pages of 8 1/2" X 11" paper and addresses many issues but not what is argued by the Employees. Claimant was apprised by the Carrier of the time, the date, the location of the incident and Claimant's potential wrong doing. The issue was thoroughly discussed during the Investigation.

The Notice of Charges was precise enough and in compliance with the Rule.

The second part of the procedural argument is that Carrier permitted someone other than the interrogating officer to issue the discipline and that same Carrier Officer who issued the discipline is the same Carrier's Officer to whom the Employees appealed the discipline.

It is to be noted that the Interrogating Officer did have an impact upon the Officer who rendered the decision. The Employees in the original appeal letter made reference to the letter from the Interrogating Officer to the Carrier Officer who rendered the

decision. A review of that letter contains the advice that Claimant violated certain specific rules of the Carrier. The Interrogating Officer did not recommend any discipline, obviously leaving that decision to the Carrier Officer who did respond.

Under these circumstances, someone who was at the Investigation and who did witness the behavior of the witnesses' testimony did have an input on the decision to discipline.

Regarding the further argument that Claimant was somehow deprived of his due process because the Carrier Officer who rendered the decision was also the Carrier Officer to whom the Claim was appealed, thus denied him an independent review, it is this Board's determination that such action by Carrier does not constitute reversible error. There was an independent review by the Carrier Officer who handled the claim on final appeal. See Third Division Awards 28304, 29445, 29548.

The last phase of the Employees procedural argument is an issue not addressed in the Investigation in the manner argued before the Board, nor was it argued in the same manner by the Employees in the on-property handling. Thus it cannot be considered.

Regarding the last contention that Carrier failed to establish Claimant's culpability of the charges preferred against him, a review of the transcript and the on-property handling leads this Board to a contrary decision. Claimant was negligent in the position he assumed when loading the rail. He ignored the instruction of his Foreman.

Claimant's culpability has been clearly established. Carrier has committed no procedural errors that would reverse the discipline process.

The Claim is denied.

AWARD

Claim denied.

ORDER

Form 1
Page 4

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This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.