

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31860
Docket No. MW-32676
97-3-95-3-613**

The Third Division consisted of the regular members and in addition Referee Charles J. Chamberlain when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Chicago, Central & Pacific Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (10 day suspension) imposed upon Mr. J. E. Klein '... for violation of Safety Rule I and 62(h) because of failure to properly plan and perform work to prevent and or avoid alleged injury to himself on March 14, 1994.' was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement.**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall receive the benefit of the remedy prescribed by the parties in Rule 35(g)."**

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 were given due notice of hearing thereon.

The Claimant is employed as a Track Foreman on the Fort Dodge section with headquarters at Fort Dodge, Iowa.

The Claimant and his crew completed their regular assigned tour of duty on March 14, 1994. Thereafter, the Claimant was called to report for duty by the Roadmaster to repair or replace a broken rail in a private road crossing at Milepost 366.7. The Claimant and his crew reported for duty as instructed and ultimately replaced the broken rail.

The following day, March 15, 1994, the Claimant telephoned the Roadmaster to report that he might have injured his back while working the night before replacing the broken rail. Medical assistance was offered but declined by the Claimant. The Claimant was instructed to file a Personal Injury Report, Form OD-0475, which he filed in accordance with the instructions.

On March 25, 1994, the Claimant received a notice to appear for an Investigation in connection with the following charge:

"Arrange to attend a formal investigation to be held as noted below in the Waterloo, Iowa yard office for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged personal injury to yourself while working at or near MP 366.7 at approximately 2200 hours on March 14, 1994."

The record shows that the Investigation was postponed until November 30, 1994. Following the Investigation, the Claimant received notice on December 15, 1994, that he was being suspended ten working days for his violation of Safety Rules I and 62(h).

During handling of the claim on the property, the Organization took the position that the Claimant did not receive his contractual right to due process and the Carrier failed to prove the charge for which the Claimant was disciplined. Our review of the record does not reveal any procedural defects which would support the Organization's position in this regard. The notice was clear and the purpose for which the Investigation was being held was clearly ascertainable. It is appropriate that the claim be decided on its merits.