

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31862
Docket No. MW-32701
97-3-95-3-635**

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:(
(CSX Transportation, Inc. (former Seaboard
(System Railroad)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (10 day overhead suspension for a period of 6 months) imposed upon Roadway Mechanic W. S. Strickland for alleged responsibility in connection with a personal injury sustained by him on October 21, 1993 was arbitrary, capricious and in violation of the Agreement [System File 94-34/16M(94-35) SSY].**
- (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 were given due notice of hearing thereon.

The Claimant was assigned to CAT Gang S-1 working at Montgomery, Alabama. On October 21, 1993, he was instructed by the Supervisor-Work Equipment to replace the insulation in the wheel of a track spiker machine which was on a side track in Montgomery, Alabama. The Claimant was informed that he would be assisted at the work site by the Machine Operator assigned to the spiker machine.

In the process of repairing the spiker machine, which involved removing the wheel, replacing the old insulation with new insulation and replacing the wheel back on the axle of the spiker machine, the Claimant sustained a personal injury to his finger and elbow, which required medical attention.

Following the incident, the Claimant was notified by letter dated October 29, 1993 to attend an Investigation "to determine the facts and place your responsibility, if any, in connection with the injury sustained by you on October 21, 1993." After several postponements, the Investigation was held on February 8, 1994.

On February 18, 1994, the Claimant was advised by letter from the Director Engineer Material and Work Equipment that it had been determined after a thorough review of the transcript of the Investigation that he was guilty as charged and was being assessed a 10 day overhead suspension for a six month period. The Organization appealed the discipline by letter dated May 12, 1994, and the appeal was denied by the Carrier on July 11, 1994.

Our review of the record and the transcript of the Investigation reveals there is no dispute as to the factual events that took place on the day of the incident.

The Organization contends that the Notice of Investigation was imprecise and, as such, no specific charge was made against the Claimant.

We find no basis for this position inasmuch as the notice clearly stated the purpose for the Investigation and the Organization and Claimant were prepared to handle his defense at the Investigation. We find that the Investigation was conducted in a fair and impartial manner.

With respect to the merits of the dispute, our review of all evidence and testimony reveals that the Claimant followed instructions and in the process of repairing a faulty spiker machine with the assistance of another employee, an accident occurred which resulted in a personal injury to the Claimant. There is nothing in the record to show that the Claimant and the employee assisting him were careless in their actions as they followed a procedure which had been followed many times in repairing track machinery. The testimony of the Supervisor-Work Equipment attests to that. He also testified that the spiker machine was positioned in a fashion where the Claimant could not get to it with his truck so as to be able to use the boom on the truck.

There is no evidence to show that the Claimant acted improperly, violated any Rules or exercised poor judgment in the performance of his duties. Accordingly, we must find that the discipline assessed against the Claimant was not justified.

AWARD

Claim sustained.

ORDER

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

Dated at Chicago, Illinois, this 4th day of March 1997.