

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31952
Docket No. MW-32696
97-3-95-3-626**

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: (
(Burlington Northern Railroad**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (mark of censure) imposed upon Messrs. A. J. Kopischke, G. E. Becker, E. L. Bramer, G. W. Walkama and J. E. Hanson for alleged violation of Rule 1 on January 17, 1994 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File T-D-791-B/MWB 94-09-07AB).**
- (2) As a consequence of the violations referred to in Part (1) above, the discipline imposed (mark of censure) shall be expunged from each Claimants' disciplinary record."**

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.

This case involves the work activities of a track section gang and the performance of their duties on January 17, 1994. The activities performed involved the removal of snow from switches, replacing a broken rail and repairing several pull aparts at various locations between Mile Posts 155 and 167.

Following the work activities performed on that date, Claimant Kopischke experienced discomfort in his back. On reporting for work the next day, he filled out an injury report asserting that he had injured his back while loading and unloading equipment on the previous day.

Subsequently, on January 20, 1994, all five of the Claimants of the section gang received a notice to report for an Investigation to ascertain facts and determine responsibility for the injury sustained by Claimant Kopischke. The Investigation was held on March 3, 1994.

Following the Investigation, all five Claimants received a notice that they were each being censured for violation of Rule 1 of the Burlington Northern Safety Rules and Rule 1 of the Maintenance of Way Rules and the censure was to be entered into each of their respective records.

During the handling of the dispute on the property, the Organization raised questions concerning the procedures followed by the Carrier and contended that the Claimants were denied due process on several fronts.

Our review of the record fails to find any basis for the Organization's position of procedural defects. A review of the transcript clearly shows that due process was afforded each of the Claimants, the Organization and others who participated in the Investigation. Accordingly, we must focus our attention on the merits of the case.

The record shows that the Claimants were required to perform numerous work activities on January 17, 1994, which required their working in a number of locations. The record shows that the weather conditions on that date were extreme with temperatures around 40° below with wind chill factors at almost 80° below zero. There is evidence that one of the employees involved sustained frost bite because of the extreme conditions.

The record shows that all of Claimants were required to handle many different tools and machines and move them from site to site to perform their track repair work. They were required to use their truck and were also required to lift the machines manually on occasion to perform their repair work. They were required to exercise judgment as to the best way to get the jobs done as safely and expeditiously as possible in extreme weather conditions that was certainly hazardous for their personal safety and well being.

After performing their day's work, one of the Claimants (Kopischke) complained that he may have sustained an injury to his back which may have occurred while helping lift a rail drill and rail expander motor on or off of the truck.

Claimant Kopischke reported for work the next day and completed an injury report.

Subsequently, the Claimants were summoned to appear for an Investigation which resulted in their being assessed the discipline which is at issue in this dispute.

We fail to find in the record where the procedures followed by the Claimants were in violation of the Rules cited by the Carrier.

In the aggregate, the Claimants had many years of service in their railroad work and quite obviously been required in all those years to perform work in inclement weather using their best judgment as to how to get the job done in the safest and expeditious manner for the railroad. It is quite evident that they did so in the instant case.

The fact that in this case an injury was sustained by one of the gang does not in itself reveal any violation of the rules cited by the Carrier.

Accordingly, we find no support for the Carrier's assessment of discipline against any of the Claimants.

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 19th day of March 1997.