Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32608
Docket No. MW-33777
98-3-97-3-251

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company - C&EI)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The discipline [withheld from service and subsequent five (5) day suspension] imposed upon Mr. G. L. Cox in connection with the hearing held on February 23, 1996 to determine the facts and place responsibility in connection with a personal injury he sustained on January 27, 1996 was arbitrary, capricious and in violation of the Agreement [System File 96175.CT/12(96-499) CEI].

(2) As a consequence of the aforesaid violation, 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.

On February 12, 1996 the Claimant was advised to attend an Investigation to determine facts and place responsibility, if any, in connection with a personal injury he sustained on Saturday, January 27, 1996 while attempting to bend a bolt by hitting it with a sledge hammer, which resulted in the bolt flying up and hitting him in the face. The incident occurred at about 10:10 A.M. at MP 176.5 on the Carrier's CE&I Subdivision near Terre Haute, Indiana. After the Investigation was held on February 23, the Claimant was advised on March 22, 1996 that it was determined that he had not performed his duties in a safe manner and he was assessed a five day actual suspension.

At the time the injury occurred, the Claimant was working alone as a Foreman Inspector. According to the Claimant, he was trying to insert a bolt into a rail and it would not fit because of a misalignment. He had stripped the threads on one bolt attempting to insert it, so he inserted a second one and hit it with a ten pound sledge to bend it to make it fit. When the Claimant hit the bolt it flew up in his face because he hit it at the wrong angle.

The issue here is whether the Claimant used a commonly practiced procedure in trying to bend the bolt in question.

According to the Roadmaster, it would have been better to have used a jack to bend the bolt, rather than to have used a sledge hammer.

According to the Claimant, however, he had bent "hundreds" of rail bolts over the years with a sledge hammer to get them to fit. He testified that this was a ". . . standard practice . . ." on road gangs. Claimant's assertion was not disputed by the Carrier. The Claimant testified that while he had also used a jack on different occasions to bend bolts, he decided against using a jack on the misaligned bolt on the day in question because he had never used a jack on a bolt so short or so small. In his judgment, if he had used a jack, it probably would not have bent the bolt, but would have ". . . pulled the rail . . ." and caused more problems than he was trying to resolve. So in his estimation a jack simply would not have worked in the instance in question. Jacks are normally used for longer frog bolts, according to the Claimant, and not for the type of bolt he was trying to bend on the day in question. This also was not disputed in

the record. Further, a drift pin also would not have worked. Because, according to the Claimant, if he would have driven one in and tried to align the holes he probably would not have been able to remove the pin because of the close quarters he had to work in where the misalignment was located. The Claimant stated that he could have laid a rope next to the rail and burnt it so that the heat would have expanded the rail. That would have worked. But he testified at the Investigation that he had been instructed not to use this procedure while working by himself for various reasons, including the mess which results from diesel fuel being spilled and so on.

A review of the alternative methods which could have been used by the Claimant to bend the bolt suggests that he used a common method in the industry to perform his job that day. Information provided warrants the conclusion that the alternative methods would have been either less safe and/or would have been impractical because the Claimant was working by himself. He also had been explicitly instructed not to use one of the alternative methods while working alone.

On the basis of the evidence of record the Board cannot find sufficient substantial evidence to conclude that the Claimant was in violation of that provision of the Carrier's General Safety Rules which states that ". . . sufficient time (must be) allowed to perform all work safely. . . ." The Claimant chose an accepted method for bending the bolt. Unfortunately he had an accident. However, there is no evidence that the injury occurred because he had been in a hurry. The Claimant simply hit the bolt at the wrong angle and it flew up in the air. Unfortunately it flew in his face and hurt him. There is no evidence that the Claimant had not taken precautions to avoid this happening.

The Carrier has not sufficiently met its burden of proof in this case. The claim will be sustained.

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 22nd day of May 1998.