

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32720
Docket No. MW-33589
98-3-97-3-31**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (letter of reprimand) imposed upon Track Repairman G. W. Litteral for alleged failure to perform his duties safely and properly in connection with the personal injury he sustained on January 9, 1996, was without just and sufficient cause and on the basis of unproven charges [System File 7(12)(96)/12(96-222) LNR].**
- (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 the letter of reprimand shall be removed therefrom."**

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.

A 12-14 inch snowfall on the evening of January 8, 1996 caused several trees to foul Carrier's Pine Mountain Branch line near Savoy, Kentucky. Claimant was using a chain-saw to limb one of the trees in the deep snow when it shifted. One of its branches caught in the strap of his safety chaps and threw him onto the track, which resulted in a low-back sprain.

An Investigation was held on January 30, 1996, following the injury. No Rule violation was cited in the Notice of Investigation. Moreover, no Rule was cited as having been violated in the letter of reprimand Claimant was issued. Rather, the letter read, in pertinent part, as follows:

"Working injury free requires employees to be aware of their surroundings. Your failure to recognize and avoid danger resulted in a personal injury."

We studied the on-property record in detail and thoroughly considered the positions of the parties as well as the cases cited. That review compels the finding that the Carrier has not satisfied the burden of proof it must meet when imposing disciplinary action. The record simply contains no evidence that the method used by Claimant was inherently unsafe. It is well settled in this industry that a work related injury, *ipso facto*, is not proof of negligence or a safety violation. See Third Division Awards 28917, 29319, 29574 and 30013. This finding is not moderated by the fact that Claimant's Foreman chose not to challenge a similar letter of reprimand.

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 August 1998.