

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32930
Docket No. MW-33905
98-3-97-3-408**

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

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employes
(The Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [ten (10) day suspension] imposed upon Machine Operator H. L. Johnson for alleged ‘... violation of General Notice (paragraph’s one through five), Rules L, H-168, H-171, H-216, H-220 and H-338 (a) ***’ in connection with a personal injury he sustained on February 15 and 16, 1995 was unwarranted, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier’s File 013.31-513).**
- (2) As a consequence of the aforesaid violation, the Claimant shall be compensated for all wage loss suffered and his record shall be cleared of the charges leveled against him.”**

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 15, 1995, Claimant, a Machine Operator with 19 years of service, injured his right knee in a fall while attempting to escape from a swarm of hornets while on assignment near Minden, Louisiana. According to Claimant, at approximately 11:00 A.M. that day, he disturbed a nest of yellow jackets while unloading new tie plates from a gondola car, and in trying to quickly step out of the car while being stung, slipped and fell coming down the ladder. He landed on his feet, felt pain, but continued to work for the remainder of the day.

Shortly after clocking in the following morning at 7:00 A.M., he reported the previous day's incident. That same morning, while climbing down from the crew cab of a section truck in the rain, his left foot slipped off the bottom step pitching him backwards. Claimant says he was holding onto handrails as required and did not fall down, but the sudden movement caused his right leg to become caught between the step and the cab. After receiving a diagnosis of knee sprain, he returned to work following treatment and lost no time on account of this injury.

On June 19, 1995, Claimant was suspended from service for ten days effective July 12, 1995. Carrier's notice of discipline indicates that it took its action based upon "substantial evidence" in the transcript of formal Investigation revealing violation of the Safety Rules cited. The Hearing Officer there had access to Company Exhibit Nos. 3-a through 3-c, 4-a through 4-c, and 5-a and 5-b, photographs of various aspects of the accident scenes, including a bent ladder from various angles, the crew cab and steps and photographs depicting the position Claimant was in when he fell on February 16. Those photos, it seems apparent from that record, were vital ingredients in Carrier's judgment on the negligence issues presented.

In the record provided to the Board the pictures in question are photocopied and useless as evidence. Without them, while it is impossible to say that the Carrier lacked justification in imposing discipline, on this record the Board must find that the Carrier failed to meet its burden of proof that Claimant was in violation of its Rules on February 15 and 16, 1995. Accordingly, the claim must be sustained. The ten day suspension shall be removed from Claimant's record and he shall be made whole.

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 23rd day of November 1998.