

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32950
Docket No. MW-33727
98-3-97-3-188**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (letter of reprimand) imposed upon Mr. R. Widup for alleged violation of:

‘. . . CONRAIL’S S7C SAFETY RULES AND PROCEDURES OF THE MAINTENANCE OF WAY DEPARTMENT, EFFECTIVE DECEMBER 1, 1990, RULE 3124 (B) AND 3002 (A) AND (D), WHICH RESULTED IN THE PERSONAL INJURY OF C. E. READING ON MAY 3, 1995. . . .’

was in violation of the Agreement (System Docket MW-4108-D).

- (2) As a consequence of the violation referred to in Part (1) above, the letter of reprimand and all references to the charges leveled against him shall be removed from Mr. R. Widup’s 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.

On May 3, 1995 the Claimant was the Supervisor of a gang at Burns Harbor, Indiana. Claimant and two other members of the gang were attempting to bend a rail with a jack when the rail broke and the Claimant fell into the bucket of a front end loader, hurting his back. He was then treated by his doctor for muscle and ligament damage, nerve root damage, and a herniated disk.

On May 17, 1995 the Carrier issued a Notice of Hearing pursuant to the charges set forth above, but the Hearing was postponed at the Claimant's request. The Claimant again requested that another Hearing, this time set for October 3, 1995, be postponed, citing his medical condition and providing as support a note from his doctor. Despite the request, the Carrier went forward with the Hearing *in absentia*, and subsequently a letter of reprimand issued to the Claimant.

The Organization contends that the Carrier committed reversible error because proceeding with the Hearing despite the Claimant's inability to attend due to his injury did not constitute a fair and impartial Hearing. We disagree. First, we note that Rule 27, relied upon by the Organization, provides only that postponements "may" be granted. Thus, discretion is vested in the Carrier and we are to be concerned only if the Carrier abuses its discretion once a request is made. On this point, we find no abuse of discretion. First, the doctor's note provided in support of the request for postponement did not preclude the Claimant from attending the Hearing. Rather, the physician says only that the Claimant could not maintain a standing or sitting posture for more than 30 minutes "... without the ability to lie down, change positions frequently, and take his medications." Moreover, the Carrier assured the Claimant that he would be accorded "... every courtesy and/or accommodation." In light of the foregoing we conclude that the Claimant unreasonably failed to attend the Hearing. Thus, when the Carrier went forward without the Claimant he was provided, under the circumstances, a fair and impartial Hearing.

On the merits the record clearly establishes that the Claimant was the Foreman of the gang and therefore responsible for its safety. Moreover, when the Claimant and two other employees attempted to bend the rail with the jack they violated Rule 3124. Thus, the Carrier has met its burden of proof and issuance of a letter of reprimand was appropriate.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 23rd day of November 1998.