

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32986
Docket No. MW-34030
98-3-97-3-543

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Santa Fe Railway (former
(Burlington Northern Railroad)

STATEMENT OF CLAIM:

“Claim on behalf of the System Committee of the Brotherhood that:

- (1) The discipline [ten (10) day suspension] imposed upon Laborer R. L. Overholt for alleged violation of Rule 1.1.2 in connection with an incident which resulted in a personal injury on May 9, 1996 was arbitrary, capricious, without just and sufficient cause and in violation of the Agreement (System File C-96-S090-10/MWA960819AC BNR).
- (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 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 May 9, 1996, Claimant was injured while guiding a tie that was being moved with a boom into position. On May 15, Claimant was notified to appear for an Investigation on May 21 concerning his alleged responsibility concerning the incident which led to his injury. The Investigation was held as scheduled. On June 18, 1996, Claimant was advised that he had been found guilty of violating Rule 1.1.2 and was suspended for ten days.

The Organization maintains that Claimant was not given a fair Hearing because the same Carrier official issued the Notice of Investigation, served as Hearing Officer and assessed the discipline. The Organization further contends that Carrier failed to prove a violation of Rule 1.1.2 by substantial evidence. Carrier argues that it afforded Claimant a fair Investigation and that it proved the violation by substantial evidence.

The Board has reviewed the record carefully. We are not persuaded by the Organization's procedural argument. The General Gang Roadmaster issued the Investigation notice, served as Hearing Officer and assessed the discipline. However, neither the Organization nor the Claimant took any exception to the General Gang Roadmaster serving as Hearing Officer prior to or during the Investigation. Furthermore, it is apparent from the record that the General Gang Roadmaster was not directly involved in the incident under investigation. Accordingly, we reject the Organization's contention that Claimant's due process rights were violated.

Turning to the merits, we find that Carrier proved the Rule violation by substantial evidence. The evidence established that Claimant was injured when he grasped a tie that was being unloaded with the boom and attempted to guide it into place. The evidence further established that the Truck Driver had instructed Claimant to stay away from the ties as they were being unloaded and to wait until they touched the ground before guiding them into place. Instead, Claimant grasped the tie when it was chest high. Furthermore, the Foreman testified that he had instructed the employees not to grasp a tie until it was waist high because of difficulty controlling ties when they are above the waist. Thus, the evidence established that Claimant, on his own, decided to grasp the tie before it had reached the ground, disregarding the Truck Driver's instructions, and when it was above waist high, disregarding the general instructions of the Foreman.

The Organization contends that these facts do not prove Claimant violated Rule 1.1.2. Rule 1.1.2 provides: "Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and perform their work to avoid injury." We believe that Rule 1.1.2 is broad enough to encompass Claimant's grasping the tie when he should not have and grasping it when it was too high to control safely. Accordingly, we find Carrier proved the Rule 1.1.2 violation by substantial evidence.

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 December 1998.