

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35321
Docket No. MW-34232
01-3-97-3-732**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) day suspension] imposed upon Laborer M. M. Farrington for alleged violation of Union Pacific Rules 1.1 and 70.11 in connection with an injury he sustained on February 26, 1996 was unwarranted, arbitrary and on the basis of unproven charges (System File D-243/1017269).**
- (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.

The record indicates that the Claimant sustained an injury to his hand while he used a claw bar on February 26, 1996. The injury led to the Claimant going to the hospital, where he received six stitches and a tetanus shot. Rule 1.1 underscores the need for employees to work in a safe manner and Rule 70.11 contains the procedure for using bars and levers.

A careful review of the record substantiates that the General Foreman completed a report about the incident. The General Foreman found that the Claimant had acknowledged that he had messed up; that the Claimant had jerked too hard on the claw bar; and that the Claimant's action had caused the injury to occur. Although during the proceeding the Claimant apparently had sought to deny any responsibility for causing his injury, the combination of the injury and the testimony of the General Foreman constitutes the requisite proof for the Carrier to have had a reasonable basis to find the Claimant responsible for causing the injury under these specific circumstances.

The record further reflects that the Claimant had received two prior disciplinary actions. As a result and consistent with the concept of progressive discipline, the Carrier had a right to impose a five day suspension for this incident to underscore to the Claimant the importance of working safely. The Award shall provide that the claim is denied.

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 16th day of February, 2001.