

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39337
Docket No. MW-39690
08-3-NRAB-00003-060545
(06-3-545)

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 Employees Division -
(IBT Rail Conference
(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) calendar day suspension from service effective immediately] imposed upon Mr. R. Gawel under date of February 18, 2005 for alleged violation of Safety Rule 318, General Rules A, I and O (Item 1) in connection with a personal injury he reported on January 13, 2005, while working as assistant foreman in Milwaukee, Wisconsin was arbitrary, capricious, excessive and in violation of the Agreement (System File D-01-05-550-01/8-00475 CMP).
- (2) As a consequence of the violation referred to in Part (1) above, all reference to this discipline shall be removed from Mr. R. Gawel’s record and he shall be compensated for any and all lost wages and have all rights and benefits restored that may have been lost as a result of this suspension.”

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 Claimant injured his right thumb when it was caught between the ball of the rail and the moving part of a derail he was closing.

Our review of the on-property record does not show that any procedural objections were timely raised or preserved for determination by the Board. On the merits, it is noted that Rule 318 specifically warns employees to keep feet and hands away from the moving parts of a derail device while opening or closing it. The Claimant did not keep his right thumb out of the range of motion of the moving part of the derail in question. While he claimed the reason for deviating from established procedure was to steady himself in the slippery conditions created by ice and snow, none of these factors were noted in the written report of injury he completed. The check box for "Snow" on the form is not checked. In the space for listing other factors, he wrote in "none" along with a note that the derail should have been closed by train personnel.

Given the foregoing, we find the Carrier's determination of the Claimant's culpability is supported by substantial evidence in the record. The discipline imposed was not shown to be unreasonably harsh or excessive in light of all relevant circumstances. Accordingly, we must deny the claim.

AWARD

Claim denied.

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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 29th day of September 2008.