

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42577
Docket No. MW-42334
17-3-NRAB-00003-130355**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [suspension from service without pay for seven (7) calendar days] imposed upon Mr. J. Nelson by letter dated January 10, 2013 for alleged violation of Pan Am Safety Rules PGR-A, PGR-E (para 1.6), PGR-O (para 1), P76 & Negligence in the performance of duties on November 9, 2012 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (Carrier’s File MW-13-01).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now remove all reference to the aforesaid discipline from Claimant J. Nelson’s record and compensate him for all lost wages”**

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 received the above-stated discipline after an investigation “to develop the facts and place your responsibility, if any, in connection with the incident(s) outlined below: Violation of Pan Am Safety Rules PGR-A, PGR-E (para 1, 6), PGR-O (para 1) P76 & Negligence in the performance of duty: Rule PGR-A reads as follows, ‘Safety is of the first importance in the discharge of duty. Obedience to the rule is essential to safety and to remain in service.’ Rule PGR-E (para 1) reads as follows, ‘When a personal injury or property accident occurs, the operation manager must be notified immediately at 800-955-9208. A written report must follow promptly on the prescribed form. (GTSF-100) (para. 6) reads as follows, ‘Employees must not withhold information or fail to give all the facts regarding irregularities, accidents, personal or rule violations to those authorized to receive such information.’ Rule PGR-O (para 1) reads as follows, ‘Employees must exercise care to prevent injury to themselves when performing their duties and plan their work to prevent injury.’ Rule P76 (Getting on and off equipment) reads as follows, ‘Employees must: A) Face equipment when getting on or off and know that it is not on a bridge or culvert, or near any other obstruction. B) Before getting on or off, carefully observe ground condition and be assured of firm footing. C) Insure a secure handhold. Grasp grab iron firmly. D) Have ball of foot firmly placed before exerting full weight on step or ladder. E) Retain handhold until foot is firmly placed on ground or other surface. F) Turn foot at an angle and place ball of foot on step or rung to permit safe and easy ascent. Specifically, on November 9, 2012 at approximately 8:30 A.M., you jumped off of the 925 tie inserter. At approximately 1520, you notified your supervisor, Richard Blanchard of a potential injury to your neck that occurred at 830.”

The Board finds the Organization’s procedural objections unpersuasive. The Board finds substantial evidence in the record to sustain the Carrier’s determination.

On November 9, 2012, at approximately 8:30 A.M., the Claimant dismounted from the tie inserter. He admits he was facing away from the equipment when he did so. Immediately upon contacting the ground the Claimant heard a “pop” and felt a “pull” in the back of his neck, and felt pain. He thought he could “work through it,” so he did not report the incident to anyone. At approximately 3:20 P.M., six hours and 50 minutes after the incident occurred, the Claimant’s Supervisor found the Claimant kneeling on the ground, in pain. During their conversation, the Claimant told the Supervisor he (Claimant) sustained injury when he “jumped off” the equipment that morning. When the Claimant filled out the GTSF-100, he wrote he had “hopped off” the equipment. At the Hearing, the Claimant testified he stepped off the equipment,

one foot at a time. The explanations in the record for the dismount description discrepancies are not persuasive.

Under the facts and circumstances of this record, the Board finds that the discipline assessed by the Carrier was neither arbitrary, capricious, unproven nor in violation of the Agreement. Therefore, said discipline will not be disturbed by the Board.

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 19th day of April 2017.