

PUBLIC LAW BOARD NUMBER 3530

Award Number: 71

Case Number: 71

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Section Laborer, S. R. Cook, P. O. Box 2631, Lynchburg, VA 24501, was assessed a 30 day suspension for alleged negligence when he sustained an injury resulting in two broken fingers. Claim was handled in accordance with the Railway Labor Act and agreement provisions. Employees request pay for lost time and record cleared.

FINDINGS

Claimant was employed as a Section Laborer on Carrier's Norfolk division. By letter dated April 27, 1984, Claimant was informed of a 30 day suspension assessed against him based on his negligence in performing duty on February 15, 1984, resulting in injury. The Organization was granted a hearing concerning the suspension imposed. The investigation was held on May 4, 1984, and continued on June 15, 1984. By letter dated June 29, 1984, Claimant was informed that the 30 day suspension imposed was being upheld.

The issue to be decided in this dispute is whether Claimant was suspended for just cause under the Agreement.

Initially, the Organization admits that Claimant used poor judgment in placing his hand under the rail while performing work on the rail. The Organization contends, however, that Carrier's discipline of Claimant was handled in an arbitrary and unfair manner. Specifically, the Organization objects to the fact that Carrier did not charge Claimant until April 27, 1984, after making financial settlement with Claimant and over two months after the incident.

The Organization argues that, in effect, Carrier was estopped after settlement from pursuing charges against Claimant based upon the accident. The Organization contends that Carrier misled Claimant into believing, during the settlement period, that no charges would be issued; and that Claimant relied on this belief in coming to settlement with Carrier. The Organization argues that it would be grossly unfair to now allow Carrier to, in effect, "have its cake and eat it too."

Carrier contends that no question exists concerning Claimant's negligence on the date in question. Carrier cites Claimant's own testimony that the injury sustained by him was due to his carelessness in using his hands as opposed to available machinery to perform work on the rail. Carrier further cites the fact that three weeks earlier, Claimant had been warned for performing in the same dangerous manner. Carrier argues that under the circumstances, a 30 day suspension was an entirely reasonable disciplinary measure.

Carrier further contends that the Organization's estoppel argument is totally without merit. Carrier argues that there is no relationship between the settlement reached and any subsequent right to pursue disciplinary action based on the circumstances surrounding the injury in question. Carrier denies that disciplinary action was instituted as "reprisal" for Claimant's settlement award. Carrier argues that the discipline imposed was based solely on Claimant's negligence.

After review of the record, the Board finds that the Organization's claim must be denied.

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

Initially, we find that the Organization's estoppel argument is baseless. Nothing involved in the settlement indicated that Carrier could not later pursue disciplinary action against Claimant. Furthermore, there is no indication that future disciplinary action played any role in the determination of an appropriate settlement. The issues of monetary compensation and discipline are entirely separate, and we find no reason why Carrier could not pursue action against Claimant subsequent to the settlement.

Regarding the substantive charge, we find that Carrier acted within its discretion in imposing the suspension against Claimant. Claimant admitted

that he carelessly used his hands to work on the rail, thus causing the injury in question. Claimant's negligence is even more inexcusable in light of the fact that he had been counselled three weeks earlier for a similar safety violation. Carrier has a right and a need to expect its employees to operate in a safe manner. In light of Claimant's negligent behavior and the injury resulting therefrom, we find that Carrier acted within its discretion in disciplining him.

AWARD

Claim denied.

Nicholas Rymas  
Neutral Member

W. J. Allman, Jr.  
Carrier Member

Bryce L. Hall  
Organization Member

DATE: 1-29-88