

PUBLIC LAW BOARD NO. 4859

Case No. 8
Award No. 8

Parties

to Dispute: International Brotherhood of Firemen and Oilers vs
CSX Transportation, Inc.

Statement
of Claim:

"Claim on behalf of Fireman and Oiler C. Christopher that record be cleared and made whole for all losses including qualifying vacation days, lost wages, and benefits."

Findings:

The Board upon the whole record and all the evidence, finds that the Parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, that the Board is duly constituted by agreement, and has jurisdiction over the Parties and subject matter of this dispute. The record indicates that the Parties were given due notice of the hearing.

Claimant, C. Christopher, was assigned as a laborer at the former L&T Railroad facility at DeCoursey, Kentucky. On February 17, 1989 the Claimant received an on the job injury when completing the process of refueling a locomotive. Subsequently, the Carrier charged the Claimant with violation of a knowing unsafe act which was not in accordance with guidelines set forth in General Safety Rule 1 of the CSX Safety Handbook: "employees must exercise care to avoid injury to themselves."

The Carrier conducted an investigation to develop the facts surrounding the Claimant's injury. As a result of the evidence presented at the hearing the Carrier determined that the Claimant was guilty and then assessed a twenty day actual suspension. The Claimant through his Organization has appealed his claim to this tribunal seeking expungement of the suspension from his record and reimbursement for lost wages.

The Organization argued that the Carrier charged the Claimant with violation of a rule which is vague and non-specific, thus improper under the negotiated discipline rule. Additionally, the Organization alleges that the Carrier did not meet its burden of proof in establishing the Claimant's guilt through substantial evidence.

The Carrier's position throughout the handling of this claim was that the Claimant caused personal injury to himself by failing to exercise proper caution in performing his task of refueling a locomotive. The Carrier argued that substantial evidence was introduced at the investigation to support its determination of guilt and the assessment of a twenty day actual suspension.

Upon careful review of the entire record presented in this case, the Board concludes that the Carrier failed to provide substantial evidence of the Claimant's guilt. Therefore, this Board will sustain the grievant's claim.

In support of this Board's determination that Carrier did not meet its burden of proof; the Board finds that the Carrier merely hypothesized regarding the cause of the accident. In fact, the Organization introduced testimony and documentary evidence which tended to establish that faulty equipment most probably caused the accident. The Carrier did not refute the Safety Committee's report and conclusion that malfunctioning equipment led to the Claimant's injury. Further, evidence in the record indicated that the Carrier was in the process of changing and updating with new technology the hose and nozzle systems used to fuel its engines. The Carrier's own Shop Manager acknowledged under oath at the investigation that the Carrier had a problem with the existing fueling system.

Clearly, the mere fact that the Claimant sustained an on duty injury does not automatically infer negligence and/or careless conduct. The Carrier did not offer any evidence which would have supported its

conclusion that the Claimant failed to exercise reasonable care on the date of his injury.


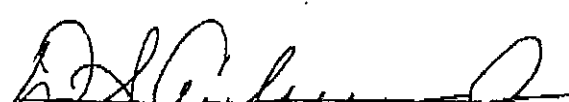
This Board cites with approval the rationale expressed in Second Division Award No. 11371, Referee Benn:

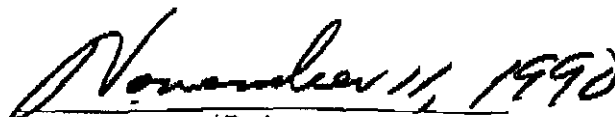
"...The Carrier speculates that Claimant was negligent by virtue of the fact that he was injured. However, speculation is insufficient to meet the burden placed upon the Carrier. See Second Division Award 10608. We shall therefore require that the reprimand be expunged from Claimant's record."

In this case, the Board has determined that the Carrier did not present substantial evidence to support its disciplinary action and therefore the claim is sustained.

Award: Claim sustained.


David M. Lefkow, Chairman and Neutral Member

 
Glynda A. Millner, Carrier Member D.S. Anderson, Employee Member


Date
Chicago, Illinois