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NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 11
NORTHEAST ILLINOIS REGIONAL COMMUTER) Award No. 10
RAILROAD CORPORATION)

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
J. E. Butler, Carrier Member

Hearing Date: November 17, 1997.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The discipline [five (5) day deferred suspension which will remain in effect for two (2) years and must be served as actual suspension if additional discipline is assessed during those years] imposed upon Work Equipment Mechanic G. Williams for his alleged "violation of Employee Conduct Rule N-2 and L and Metra Safety Rules A and I was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File 08-13-249).
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be afforded the remedy provided in Rule 32 (E) of the Agreement.

FINDINGS:

Public Law Board No. 5564, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On March 13, 1996 Claimant and another employee were removing bushings from a machine using a rod and a sixteen pound hammer. Claimant was holding the rod with his hand and the other employee was hitting it with the hammer. Claimant injured his finger.

On March 21, 1996, Carrier notified Claimant to appear for a formal investigation on March 28, 1996. The notice charged Claimant with violating Safety Rules A and I and Employee Conduct Rules N-2 and L. Following two postponements, the hearing was held on April 17, 1996. On May 2, 1996, Carrier notified Claimant that he had been found guilty of the charge and assessed a five day deferred suspension.

The Organization contends that Carrier failed to prove that Claimant was negligent or otherwise responsible for his injury. The Organization maintains that Claimant, who had less than one year of seniority, relied on the judgment of the other employee who had considerably more seniority and was following the other employee's instructions. Furthermore, the Organization argues, Claimant had received no safety instructions advising him not to use his hand to hold the rod.

Carrier contends that it proved claimant's responsibility by substantial evidence. Carrier contends that Claimant should have been holding the rod with channel locks or another type of handle rather than with his hand. Carrier further argues that the Assistant Supervisor testified that the proper way to hold a rod when another person is swinging the hammer was discussed in safety briefings at which Claimant was present.

The Board has considered the record carefully. We find that substantial evidence supports the finding on the property that Claimant was responsible for his injury.

There is no question that Claimant was holding the rod with his hand. There also is no question that if Claimant had been holding the rod with a tool instead of his hand he would not have been injured. The only question is whether Claimant should have realized this and should have held the rod with channel locks or a similar tool.

The Assistant Supervisor testified that the proper way to hold a rod when another person is swinging a hammer was covered in safety briefings prior to the day of the accident. Although Claimant could not recall the subject coming up at a safety briefing prior to the accident, Carrier credited the Assistant Supervisor's testimony and, as an appellate body, we see no reason to overturn that finding. Moreover, it seems to be a matter of common sense that one should not put one's hand in harm's way when someone else is controlling a sixteen pound hammer.

We recognize that Claimant had less than one year's seniority and was following the lead of the more senior employee with whom he was working. However, Claimant's short tenure on the job does not excuse him from looking out for his own safety on such a basic matter as not holding a rod with one's hand when

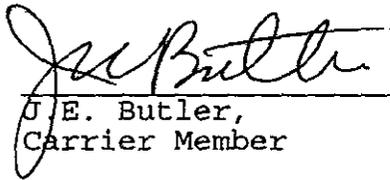
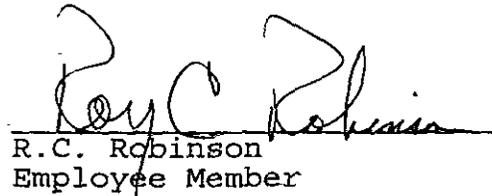
someone else is controlling the hammer.

AWARD

Claim denied.



Martin H. Malin, Chairman


J.E. Butler,
Carrier Member
R.C. Robinson
Employee Member

Dated at Chicago, Illinois, February 16, 1998.