

Award 9

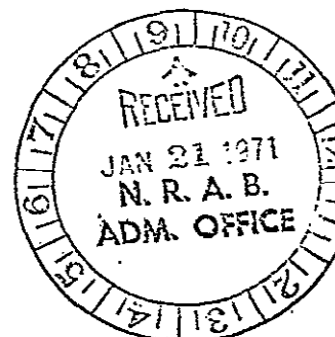
Docket No. 286

PUBLIC LAW BOARD NO. 566

Pennsylvania Federation Brotherhood of Maintenance
of Way Employees

vs.

PENN CENTRAL TRANSPORTATION COMPANY



STATEMENT OF CLAIM:

"EASTERN REGION

System Docket No. 286 - Chesapeake Division Case 361 D

"Denial of an appeal of W. Preston, Electrician, Perryville Substation for violation of Safety Rule 3744 and 3718 on August 21, 1968 at Perryville Substation, Perryville, Maryland."

OPINION OF BOARD:

Claimant was charged with violation of safety rules in connection with the electrocution of a co-worker. After investigation and hearing, Claimant was found in violation and was suspended for a period of 30 days.

A careful examination of the record in this dispute compels the conclusion that the evidence adduced was not sufficient to show that any action on the part of Claimant contributed to the death of his co-worker. Claimant was not so charged. Both employees were qualified Class A substation electricians equally responsible for the work in connection with overhauling the oil circuit breaker.

Carrier's evidence with respect to the question of whether grounds were properly placed on the "hot" wires, in refutation of Claimant's testimony, was circumstantial and conjectural at best.

AWARD: The Claim is sustained, Order date is 30 days from the date of this award.

PUBLIC LAW BOARD NO. 566

/s/ Nicholas H. Zumas
Nicholas H. Zumas, Chairman

/s/ A. J. Cunningham

/s/ S. J. Wilson Dissent

A. J. Cunningham, Employee Member

S. J. Wilson, Carrier Member

Signed and dated at Philadelphia, Penna. December 18, 1970

Dissent to Award No. 9
Public Law Board No. 566

The majority concludes that "the evidence adduced was not sufficient to show that any action on the part of Claimant contributed to the death of his co-worker." As stated in the Opinion, Claimant was not charged with having contributed to the death of his co-worker. Neither was he disciplined on that basis. The offense with which Claimant was charged stands alone, independent of the fatal injury to Claimant's co-worker.

The propriety of the discipline turned on whether Claimant had in fact applied grounding devices in accordance with the requirement of the Safety Rule. The majority states that "Carrier's evidence with respect to the question of whether grounds were properly placed on the 'hot wires' in refutation of Claimant's testimony, was circumstantial and conjectural at best." The record contains the testimony of Claimant that he applied necessary grounding devices at the beginning of the tour of duty. In his statement on the date of the occurrence, Claimant testified that the grounding devices in question were never removed after having been once applied. During the trial two weeks later, Claimant testified that he had removed the grounding devices subsequent to the fatal accident, but that he did not tell anyone in authority. Claimant testified that he had just completed returning the ground wires to a box in the middle of the sub-station yard where they were kept after having removed them when the ambulance returned from the hospital between 10:45 A.M. and 11:00 A.M. A Carrier witness testified that he arrived at the sub-station just as the ambulance was leaving for the hospital (10:15 A.M.); that there were no grounding devices present at that time and that he did not thereafter leave the building until after the arrival at 11:00 A.M. of a Foreman.

If Claimant applied the grounds at the beginning of the tour of duty as he said he did, it is clear that they had to be removed before 10:15 A.M. at which time a witness observed there were none present. Claimant could not have removed them between 10:00 A.M. and 10:15 A.M. because he was busy taking care of the injured co-worker during that period. Claimant testified that following the accident at 10:00 A.M. he removed him from the immediate area of the accident, that he called for an ambulance that he applied resuscitation, that he went for a stretcher, and that he helped carry the injured man to the point outside the sub-station gate where the ambulance picked him up. Claimant also testified that he completed the removal of the grounds at a time he was apprised of the fact that his co-worker had died. This would have had to be some considerable time subsequent to 10:15 A.M. and much closer to 11:00 A.M. Yet a witness was present in the sub-station from 10:15 A.M. and did not observe the grounds on the equipment or being removed therefrom. This coupled with the fact that Claimant never told the Power Director that he removed the grounds, is convincing evidence that Claimant did not in fact ever have the grounding devices applied on the date in question, and that by such failure, he violated the applicable safety rule. The evidence of record clearly, logically and preponderantly shows there were no devices attached to the equipment, and the conclusion that they were never applied in the first place cannot properly be said to be based upon conjecture and assumption.

The majority has clearly failed to analyze correctly the evidence in the case and on the other hand finds in favor of Claimant on the basis of Claimant's testimony which the record shows conflicts itself.

/s/ S. J. Wilson

S. J. Wilson, Carrier Member