

SPECIAL BOARD OF ADJUSTMENT 993

Case No. 419
Award No. 419
Carrier's File No. 1298847
Organization's File No. 02015
NMB Code: 106
Claimant Conductor J. M. Medina

PARTIES TO THE DISPUTE:

UNITED TRANSPORTATION UNION

AND

UNION PACIFIC RAILROAD COMPANY

Statement of Claim:

Request of Trainman J. M. Medina, Roseville Service Unit, for removal of a Level 2 discipline assessment from his personal record and pay for time lost during his attendance at a formal investigation held on November 21, 2001.

Findings:

Upon the entire record and all the evidence, this Board finds the parties herein to be Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this board has jurisdiction of the parties and over the dispute involved herein.

The Claimant was first employed by the Carrier on August 15, 1974, assigned to the Roseville Service Unit.

On October 18, 2001, the Claimant was assigned as Conductor on a work train which was being loaded with ballast. As he crossed through the train to dismount in order to reach a water line to hose down the ballast, he saw a large rock at the bottom of the steps. He stepped over the rock to avoid injury and stepped onto the ballast on the other side. Afterwards he noticed severe pain in his knee. He reported the injury and was taken for medical attention.

A preliminary investigation was conducted. By letter dated October 30, 2001, the Claimant was directed to appear at a formal hearing on November 21, 2001. The purpose of the hearing was to determine if the on-duty injury sustained by the Claimant was the result of violating Rules 1.4, 80.1, 81.5.4, 80.2, 80.4, 81.1.1, 81.2.1, 81.2.2, 81.4, 81.4.1, 81.4.2, 81.5, 81.5.1, 81.5.2, 81.5.3, 81.7.1 and 81.7.2.

After reviewing the evidence from the hearing, the Carrier found the Claimant guilty of violating the cited rules. By letter dated December 19, 2001, he was notified of their findings and assessed a Level 2 discipline. The Organization appealed the discipline.

The Carrier argues the Claimant failed to properly dismount a rail car and was inattentive when walking the toe path alongside the train on October 18, 2001.

On that day, they contend, the Claimant crossed through a car in order to water down the ballast on the train, which they say was not his job. Furthermore, they contend the Claimant knew a large rock was at the bottom of the ladder and should have chosen another location to dismount. Moreover, because of the rock, the Carrier asserts, the Claimant had to put himself in an awkward position to dismount, therefore, he was responsible for his injury.

They insist the Claimant was provided all due process and the discipline assessed was reasonable.

The Organization argues an employee's on-duty injury does not equate to an automatic rule violation. They say since the Claimant was the only witness to the incident, any conclusions drawn by Carrier Officers are opinions and supposition. They cite the testimony of the Officers, one of whom admitted he did not know what happened, while the other Officer offered second hand information from a Brakeman who had not witnessed the event. In fact, they point out, the Brakeman denies ever being interviewed by the Officer but instead was interviewed by Superintendent Shudak who subsequently denied the Claimant's appeal. If anything, they say, Officer Dunn's information was apparently third hand.

Finally, they insist the Carrier failed to meet its burden of proof. They recall Carrier Officer Valdez's testimony wherein he conceded he saw the rock in question and could not state with certainty the Claimant violated Carrier rules. They contend the Claimant was simply prejudged.

DECISION

The Board has reviewed the charges brought against the Claimant in the Notice of Investigation dated October 30, 2001. To say the least, the long list of rules cited in the charge letter is somewhat overwhelming. It certainly gives the impression that the Charging Officer felt that if he charged the Claimant with enough rule violations, one would stick. We not only find that troubling but it is also noteworthy that the Hearing Officer told the Claimant he would be charged with only violating three rules 80.1, 80.2 and 81.4.1. Despite this the Claimant was found guilty of violating all the rules in the original charge letter. Our concern is not diminished by the Carrier's assertion that they were not certain of what happened when charges were brought against the Claimant. There is at least a premise that charges are not brought against an employee until a preliminary investigation takes place and there is a prima facie case against the employee.

The Carrier had twelve days after the incident to investigate the matter before they charged the employee with any rule violations. They could have reached a conclusion that only 3 rules were applicable. It seems unfair to have charged the Claimant with a myriad of rule violations and not advise he or his representative before the hearing that many of the rules would be dropped. Moreover, there is no evidence the preliminary investigation went beyond the twelve day interim. Furthermore, and perhaps more significantly, the results of the Investigation dated December 19, 2001, still found the Claimant guilty of violating nearly all the rules cited in the Notice of Investigation.

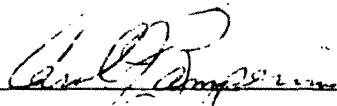
As to the merits of this case, we must agree there was evidence the Claimant could have avoided his injury if he had been more observant and had avoided the rock which he testified was at the bottom of the ladder. In that regard, there is sufficient evidenced he violated Rule 80.1.

In view of his years of service, his record and other mitigating factors, we believe he should be assessed a Letter of Reprimand.

AWARD

The claim is sustained to the extent the Level 2 discipline is to be reduced to a Letter of Reprimand.

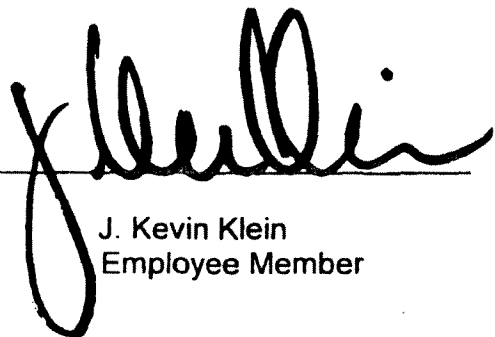
The Carrier will comply with this Award within thirty (30) days of its receipt.



Carol J. Zamperini
Impartial Neutral and Chairperson



Robert A. Henderson
Carrier Member



J. Kevin Klein
Employee Member

Submitted this 21st day of July, 2003.