

SPECIAL BOARD OF ADJUSTMENT NO. 541

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM:

1. The Carrier improperly disciplined Carpenter Patrick Dominica, account of a personal injury sustained by him on September 9, 1963 in the Carpenter Shop at Jersey City.
2. The Carrier failed to prove its charge that Claimant Dominica acted in violation of Carrier's General Notice, page 1 of the Safety Rules at the time, place and date here involved.
3. The Carrier shall now reimburse Claimant Carpenter Patrick Dominica for his loss of ten days of work which resulted from this improper suspension, during the period March 16-20 and March 23-27, 1964, and that his record be cleared of this charge.

FINDINGS: On September 9, 1963, Claimant, a carpenter, injured his right index finger while operating an electric circular table saw cutting new fir planks into six feet lengths. Claimant had cut five planks involving some eighteen cuts without incident but then hit a plank he was trying to position against the back guide with his right hand which slipped off, his right index finger striking the revolving blade and being amputated at the first joint.

After a hearing had been held on due notice, Carrier found that Claimant's injury was the result of his own negligence and on that ground, suspended him for a ten day period.

It may be that Claimant was negligent and should be subjected to discipline but the record, consisting almost entirely of Claimant's testimony, does not adequately establish the necessary facts to support those conclusions. The mere fact that Claimant injured himself in the course of his work does not prove that he was sufficiently at fault to merit a suspension, even if due emphasis is given to the absence of any prior accident on the machine in its over 16 years of operation. There is no evidence that Claimant violated specific safety procedures or instructions that he had been given in regard to the operation of the circular saw, and no supervisory employee or other witness presented additional facts to show precisely how Claimant's performance failed to reach the level of the average reasonable working man in his position. Carrier must support costly discipline to an employee upon clear persuasive proof and not upon mere suspicion, assumption and argument.

In its argument before this Board, Carrier contended that the claim must be denied in any event because of a general release executed by Claimant after this claim was filed. We are not impressed with that point for the purpose

of that release was to discharge claims for personal injuries and it is not an effective bar to an employee grievance, in which the organization also has an interest, as to improper discipline.

For want of clear proof, the claim will be sustained.

AWARD: Claim sustained.

Dated at New York, N. Y., this 29th day of October 1968.

/s/Harold M. Weston
HAROLD M. WESTON, Neutral

/s/J. Cunningham
ORGANIZATION MEMBER

/s/R. J. Carroll
CARRIER MEMBER