

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32082
Docket No. MW-32784
97-3-96-3-101

The Third Division consisted of the regular members and in addition Referee Jonathan S. Liebowitz when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Seaboard
(System Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline assessed Welder Helper O. P. Johnson for his alleged violation of CSX Safe Way Rules 1, 24 and P-28 in connection with an injury he sustained on March 7, 1995 was without just and sufficient cause, based on an unproven and disproven charge, and in violation of the Agreement [System File 23(17)(95)/12(95-0428) SSY].
- (2) The discipline assessed Trackman F. C. Creer for his alleged violation of CSX Safe Way Rules 1, 24 and P-28 in connection with an injury sustained by another employee was without just and sufficient cause, based on an unproven and disproven charge and in violation of the Agreement [System File 23(11)(95)/12(95-0429) SSY].
- (3) As a consequence of the violation referred to in Part (1) above, Welder Helper O. P. Johnson shall now have his record cleared and he shall be compensated for all wage loss suffered and credited with forty (40) hours' vacation pay.
- (4) As a consequence of the violation referred to in Part (2) above, Trackman F. C. Creer shall now have his record cleared and he shall be compensated for any loss suffered.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

By letter dated March 13, 1995 Roadmaster G. L. Phelps advised the Claimants and Trackman C.H. Bennett, Jr., Welder W. M. Wilkins, and Foreman J. B. Hahn as follows:

"Tuesday, March 7, 1995, O.P. Johnson, Welder Helper, sustained an on-duty injury while making repairs to a bolt machine at Fanshaw Yard, Richmond, VA. Each of you are directed to attend a Formal Investigation to develop the facts and place your responsibility, if any, in connection with this incident.

The investigation will be 10:00 AM, Friday, March 17, 1995, in the Office of Division Engineer, 100 Oakland Avenue, Florence, SC.

You may have representation if you so desire in accordance with the Agreement under which you are employed and you may arrange to have present any witnesses who may have knowledge of this matter."

Following the formal Investigation held on March 17, 1995, the Carrier determined that there was sufficient evidence to find that Claimants Johnson and Creer violated portions of CSX Safe Way, Rules 1, 24 and P-28, which were contributing factors leading to the on-duty injury of Claimant Johnson. As a result, Carrier assessed Claimant Johnson with a 30 day actual suspension via letter dated April 6, 1995, and Claimant Creer a ten day overhead suspension for six months via letter dated the same

date. Those letters state that the transcript of the March 17, 1995 Hearing shows that Claimants were in violation of Rule 1 (Rights and Responsibilities), Rule 24 (Tools and Equipment) and Rule P-28 (Power Tools). The Carrier found that Claimants were guilty of not holding a job briefing concerning a method to deal with the problems posed by a bolt machine which was breaking bolts that were used to hold the chuck in place, working on the bolt machine with the motor running, and putting (or allowing in Claimant Creer's case) a modified steel rod into the bolt machine instead of a proper pin.

The accident occurred while Claimant Johnson was attempting to insert the modified rod into the bolt machine with the bolt machine still running. Claimant Creer leaned over the bolt machine to assist and inadvertently touched the bolt machine causing the gear to engage, to turn the modified rod, lacerating Claimant Johnson's index finger with the jagged edge of the rod. Due to the severity of the finger injury, Claimant Johnson was taken to Richmond Memorial Hospital for medical treatment.

The Organization asserts that Claimants were not charged with failure to hold a job briefing or violating Rules 1, 24 and P-28. The Organization cites Agreement Rule 39, Section 4 which provides among other things that the charges shall be in writing "... and shall clearly specify the charge the Carrier is making or nature of the employee's complaint."

Our review failed to indicate how the language of the Carrier's March 13, 1995 letters places the Claimants on notice of the alleged violations of which the Carrier found them guilty. It merely states that Claimant Johnson sustained an on-duty injury while making repairs to a bolt machine.

The Carrier points out that the March 13, 1995 charge letter clearly stated that each of the principals was directed to attend the Investigation "to develop the facts and place your responsibility, if any, in connection with this incident." The Carrier apparently relies on the transcript of that Investigation to establish the facts which it asserts support its determination.

The Organization cites decisions on the requirement of notice of the exact charge and time and place of trial (Third Division Award 9027) timely and adequate notice of the charge or charges (Fourth Division Award 2270) and the language of the Rule itself, quoted above. Those authorities demonstrate that a mere statement of an injury and

But because of the Carrier's failure to give Claimants proper notice of the charges against them, their claims must be sustained rather than directing a modification of the disciplinary actions taken against them.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of July 1997.