

The Second Division consisted of the regular members and in addition Referee Edwin H. Bena when award was rendered.

(International Association of Machinists and Aerospace
(Workers

Parties to Dispute: (

(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. The Norfolk and Western Railway Company violated Section A-1 of the schedule agreement as amended May 1, 1983, but not limited thereto, when it arbitrarily and capriciously disciplined Machinist J. Blade, Jr. by assessing him a thirty (30) day deferred suspension following investigation held on August 21, 1984.

2. Accordingly, Machinist J. Blade, Jr.'s, record should be cleared of any reference to the discipline.

FINDINGS:

The Second 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 employees 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 waived right of appearance at hearing thereon.

Claimant is a Machinist with 18 years of service. As a result of charges dated June 29, 1984, and Hearing held August 21, 1984, Claimant was assessed a 30 day deferred suspension by letter dated September 21, 1984 for failure to display a blue flag.

On June 21, 1984, Claimant was making repairs to locomotive SOU 2831 on the Carrier's north fuel track at North Kansas City, Missouri. While Claimant was making those repairs, the absence of a blue flag was noticed by a Foreman and a FRA Inspector. The Foreman brought the matter to Claimant's attention and instructed Claimant to immediately display a blue flag. Claimant admits that when he was spoken to by the Foreman and, while making the repairs at that time, he did not have a blue flag on display.

Operating Rule 1302(c) states:

"When workmen are on, under, or between a locomotive or rolling equipment coupled to a locomotive on either a main track or other than a main line, a blue signal must be attached to the controlling unit. . . . "

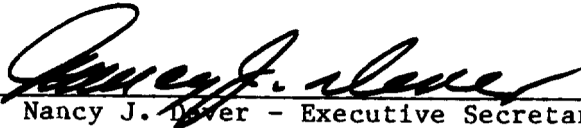
Upon our review of the record, we must deny the Claim. First, we are satisfied that the type of work Claimant was performing brought Claimant within the ambit of Rule 1302(c). Although Claimant was laying on the ground at the time he was making the repairs to the engine, he was nevertheless in physical contact with the unit and such functions appear to fall within the broad safety requirements of the Rule. Second, the Organization's argument that Claimant's failure to display the signal should be excused because he was generally working as part of a group and consistent with prior practice the first person working on the unit (usually a laborer) was to display the signal, must be rejected. The Rule is clear on its face and under the circumstances, even assuming that the first person or any individual in the group failed to maintain the blue signal, the responsibility for displaying the signal belonged to Claimant while he was individually working on a unit requiring a blue signal. Under the circumstances, the fact that the blue signal was displayed prior to Claimant's lunch break and was then removed by the time Claimant commenced working after his break does not excuse Claimant's responsibility for making certain that the signal was properly displayed while he was working on the unit. Third, the failure of the FRA inspector to testify about a citation or lack thereof concerning the incident does not require a different result in this case. We are concerned with the evidence adduced in the record and the specific rule at issue. The testimony of the Foreman and Claimant establishes the basis for discipline irrespective of any testimony that the FRA inspector might have offered concerning a citation. Upon review of the record, we are satisfied that substantial evidence exists to support the Carrier's decision to impose discipline because Rule 1302(c) was not followed. Finally, we cannot say that the assessment of a 30 day deferred suspension for such conduct is either arbitrary or capricious. Second Division Award 10357, Public Law Board No. 3900, Award No. 9.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1987.