

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13598

Docket No. 13478

01-2-99-2-80

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

- “1. Springfield Terminal Railway Company violated Rule 15 of the controlling Agreement, effective June 1, 1995, as amended, when by letter dated August 3, 1998 the Carrier arbitrarily, capriciously and unjustly suspended Machinist Phil Davis for two (2) working days after an Investigation/Hearing held on July 8, 1998.**
- 2. Accordingly, the decision should be reversed, Machinist Davis exonerated of the charge(s), his record and personnel files cleared of any reference thereto. And he be made whole for any and all losses suffered as a result of Carrier’s arbitrary, capricious and unjust actions, including but not limited to, time spent at formal Investigation/Hearing of July 8, 1998.”**

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 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.

On June 15, 1998, the Claimant was assigned to work as an outside machinist in East Deerfield, Massachusetts. As part of this assignment, the Claimant was required to service and inspect locomotives for outbound train PODH to ensure that they were in compliance with FRA rules. The Claimant signed off on an inspection report on Locomotive 681, which indicated that, with the exception of one tube problem not relevant here, there were no defects or exceptions noted or repaired. The train was thereupon dispatched to Mohawk, New York.

The following day, these same units were inspected by an FRA Inspector. The Inspector found four defects on locomotive 681. The Carrier was cited for the violations and fined.

The Claimant was subsequently notified to attend an Investigation in connection with the charge that he failed to properly perform his duties while assigned to service and inspect locomotive 681. Following the Investigation, which was held on July 8, 1998, the Claimant was issued a two-day suspension.

The Organization protested the discipline, asserting that the Carrier failed to meet its burden of proof. The Organization also argues that the Claimant was not properly trained in the areas found deficient by the FRA, and was not provided with the applicable FRA regulations. Additionally, the Organization submits that, of the four items cited by the FRA Inspector as defects, the Claimant was either not qualified or not responsible for identifying these defects. Finally, it is the Organization's position that the recitation of the Claimant's prior discipline record, as set forth in the transcript of the Hearing, was prejudicial and violative of due process.

The Board has carefully reviewed the record in its entirety. First, we find no basis for a finding that the Claimant was denied due process or a fair and impartial Investigation. The Claimant's prior discipline record was included in the record. Notwithstanding the Organization's arguments to the contrary, it is immaterial whether an employee's prior record is summarized or, as in this case, reviewed at length. The more pertinent question is whether the past record is utilized in determining the proper penalty for an offense rather than as evidence that the employee committed the specific act or misconduct charged. In this case, the Hearing Officer expressly stated that the

Claimant's discipline record would be considered only for the purpose of assessing discipline in the event of a guilty finding.

Since there is no evidence that the Claimant's prior record was used for any impermissible purpose, we reject the Organization's contention and find that the manner in which the record was introduced was not prejudicial to the Claimant.

On the merits, we are unpersuaded by the Organization's attempts to shift responsibility from the Claimant for the cited FRA violations. The record shows that the Claimant performed the top deck inspection on locomotive 681. He knew or reasonably should have known how to perform a daily inspection, since he had previously performed that same job assignment many times. There is no indication on the record that the Claimant notified supervision that he needed additional training or had questions about how to perform his job assignment on prior occasions. Moreover, a copy of the FRA rules and regulations was available for all employees to reference upon request. The Claimant did not avail himself of that information.

Equally important, the Carrier was cited for missing covers over moving parts. These defects were visually observable. The Claimant conceded that he knew that at least two of these components normally had covers, and he admitted that there was a possible safety hazard created by the covers not being in place. In addition, the Claimant testified during the Hearing that, if he had noticed that the covers were missing, he would have reported the defects to his Supervisor. This factual predicate compels the conclusion that the violations here were caused, not by lack of training or unfamiliarity with proper inspection procedures, but by the Claimant's dereliction of duty. The Claimant's assignment on that day was to inspect the locomotive for defects. Through carelessness or inadvertence, he failed to perform the core function of that job.

Concluding as we do that the Carrier has met its burden of proving the Rule violation in this case, the remaining question is the propriety of the two-day suspension meted out to the Claimant. As part of our reviewing function, the Board may not modify a disciplinary penalty absent a finding that discrimination, unfairness or capricious and arbitrary action have been proved. No such finding is warranted on this record, and we must therefore rule to deny the claim.

Form 1
Page 4

Award No. 13598
Docket No. 13478
01-2-99-2-80

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 3rd day of May, 2001.