

Award No. 198

Docket No. 199

2-IC-EW-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That W. S. McLaren, electrical worker, be compensated for all time lost during suspension period of ten (10) days, February 11 to 24, 1937.

JOINT STATEMENT OF FACTS: W. S. McLaren was employed as an electrician at Burnside car shops, Chicago, Illinois, since July 3, 1934. Shortly before quitting time February 10, 1937, Car Department Foreman Van Bergen instructed Electrical Worker McLaren to report to Electrical Foreman Olson. Electrical Foreman Olson informed McLaren he was suspended from the service. The suspension was for an alleged violation of the railroad company's safety Rule No. 95. An investigation was held on February 13, 1937, and McLaren was suspended from the service for a period of ten (10) days.

POSITION OF EMPLOYEES: The employees contend that Mr. McLaren did not violate safety Rule 95 by failing to use goggles when necessary for proper protection; that he always wore them when necessary. The claim is that the suspension here was purely a matter of discrimination on the part of the carrier, and therefore, was a violation of Rule 41, which provides against discrimination of any committeemen who are delegated to represent other employees.

POSITION OF CARRIER: The carrier contends that safety Rule 95 was violated by the employe by failure to wear goggles when necessary while working under a car. In support of this contention, the carrier points to testimony taken at a hearing on this question. The carrier claims that the testimony supports action in this matter.

OPINION OF THE DIVISION: This decision is concerned with an alleged violation of company's safety Rule 95. The questions to be decided are:

(1) Has the carrier the right to promulgate and enforce ex parte operating rules designed to promote safety.

(2) Could McLaren be suspended pending hearing for alleged violation.

(3) On the record as presented in this case, was there credible evidence to sustain the finding of violation on which the discipline was imposed.

There can be little doubt of the carrier's right to enforce operating rules designed to promote safety, even though the employees have no part in writing the same. In the opinion of this Division the safety rules would be greatly strengthened if they were the result of the joint action of men and management and resulted from negotiation and agreement. It is equally clear that McLaren could, under Rule 39 of the agreement, be suspended in "a proper case" pending hearing for alleged violation. The facts sustain the conclusion that this was "a proper case." It is likewise clear that there was ample evidence to sustain the finding of a violation of operating Rule 95. There was some contradiction of fact. There was, however, no direct evidence to support the view that the discipline was the result of a discrimination against McLaren.

While it is true that this Division should be slow to substitute its judgment in matters of discipline for that of responsible management, it is likewise true that management should administer discipline in such a manner as to leave neither cause nor occasion for the claim of discrimination. Safety rules promote an interest that is mutual rather than antagonistic. There being no ground on which to find discrimination, and there being ample evidence to sustain the finding of discipline, the claim of the employee must be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

The carrier did not violate its agreement with System Federation No. 99 in disciplining employee McLaren for violation of safety Rule 95.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of December, 1937.