

The Second Division consisted of the regular members and in addition Referee Francis M. Mulligan when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
( Burlington Northern Railway Company

Dispute: Claim of Employes:

- 1) That the Burlington Northern, Inc. violated the terms of the controlling agreement, particularly Rule 35, when they suspended Laurel, Montana Carman P. T. Callahan for a period of five (5) days pursuant to an investigation held August 13, 1980.
- 2) That accordingly, the Burlington Northern, Inc. be ordered to compensate Carman P. T. Callahan in the amount of eight (8) hours at the straight time rate of pay for each work day withheld from service commencing September 1, 1980, to and including 7:00 A.M. September 6, 1980. In addition, P. T. Callahan be made whole for any other benefits he would have earned and that the entry of censure be removed from his personal file.

Findings:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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, P. T. Callahan, had been an employe of the Burlington Northern, Inc. for over three (3) years. At the time of his suspension, he was working at the Laurel, Montana complex which consists of a facility employing approximately five hundred (500) carmen and their apprentices and various other shop craft mechanics.

The facility is the carrier's largest coal car repair shop and adjacent to the coal car repair shop, there is a Repair Track, a One-spot Repair and a Train Yard. On July 14, 1980, Claimant was notified to arrange to attend a formal investigation on July 21, 1980, for the purpose of ascertaining the facts and determining Claimant's responsibility in connection with his alleged failure to wear safety glasses while in a posted safety glass area on July 8, 1980. Thereafter, the hearing was postponed by a letter of July 18, 1980 until August 13, 1980 at 8:00 a.m.

The investigation was ultimately held as scheduled on August 13, 1980 at 8:00 a.m. Following the investigation, Claimant was notified by letter dated August 29, 1980 that he would be disciplined for violation of Burlington Northern, Inc. Safety Rules 640 and 641 for a period of five (5) days effective 11:00 a.m., September 1, 1980 to and including 7:00 a.m., September 6, 1980 for failure to wear safety glasses in a posted safety glass area on July 9, 1980 in violation of the aforesaid Rules. In addition, an entry was made in the Claimant's personal record to the effect that he was suspended for five (5) days for failure to wear safety glasses in a posted safety glass area.

The record establishes that the Claimant was working in an area which was posted to require employees to wear safety glasses. Car Foreman, J. T. Surma instructed the Claimant to wear the safety glasses and to keep them on while working. This instruction was repeated three (3) times. The first instance was at 12:05 a.m.; thereafter, at 2:05 a.m.; and thereafter at 2:25 a.m. On each occasion, the Claimant was not wearing his safety glasses. On each of these occasions, Mr. Callahan was working at his station on East 3. On none of these occasions were his safety glasses covering his eyes. The first time, they were in his hands. On the other two (2) occasions, they were folded in his coverall pocket. The type of activity in the work area was burning, riveting, decking and general heavy repairs.

There is evidence in the record that Claimant's Foreman had told Claimant, prior to this occasion, about the necessity and importance of the wearing of safety glasses in posted safety glass areas. There is nothing in the record to indicate that Rules 640 and 641 would not apply in the area in question. The real issue in mitigation on behalf of the Claimant is the fact that there was un rebutted testimony to the effect that a number of other persons were in the area without safety glasses. The Claimant's principle witness stated that he had observed at least seventy (70%) per cent of the whole Big Shop without safety glasses. The organization raises the issue of discriminatory enforcement of the Rule. The Board's concern is with the paramount importance of the safety rules. P. T. Callahan was told several times to wear safety glasses. We do not know what warnings were given to others. The Car Foreman, on three (3) separate occasions, advised him to use his safety glasses.

As stated in Public Law Board No. 2566, Award No. 2, (Carter):

"It is the opinion of this Board that in railroad operations of any kind, safety is of primary importance. In order to properly carry out its operations, Carrier must insist that its employes faithfully and carefully execute the responsibilities which develop upon them."

All other issues raised in this appeal, including the unfairness of the hearing, are not substantiated by the organization. The suspension will be upheld for three (3) of the five (5) days. Mitigating circumstances exist. Others in the shop were without the glasses at the same time. No penalty was imposed on anyone else. The rule should apply across the board.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of May, 1983.