

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace
(Workers A.F.L. - C.I.O. Machinists
(The Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the terms of the Agreement, Machinist B. L. Doss was unjustly given a twenty (20) day deferred suspension on January 7, 1981, by the Norfolk and Western Railway Company.

2. That the Norfolk and Western Railway Company remove the twenty (20) day deferred suspension from Machinist B. L. Doss service record.

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 employes 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 was employed as a machinist at Carrier's Roanoke Shops. On October 2, 1980, he was notified:

"An investigation will be held in the Car Department Conference Room, Roanoke Shops, Roanoke, Virginia, October 24, 1980 at 12:30 P.M. EDST to determine your responsibility for violation of Safety Rule 1201. Paragraph 1, on September 11, 1980 at approximately 8:30 A.M. in that you improperly leaned a wheel against a rail which subsequently fell resulting in an injury.

If you desire representation or witnesses please so arrange."

Safety Rule 1201, Paragraph 1, referred to in the letter of charge, reads:

"Leaving tools or material on end or leaning against walls, locomotives, cars, or other places where they may fall or be knocked down and cause injuries is prohibited."

By agreement, the investigation was postponed and conducted on November 14, 1980, following which claimant was assessed discipline of a twenty-day deferred suspension. During the investigation, the representative of the Organization objected to the use of a tape recorder. We do not consider such objection valid. See our Award No. 9969. Various other objections were made; however we consider none of them valid.

A copy of the transcript of the investigation conducted on November 14, 1980, has been made a part of the record. During the course of the November 14, 1980 investigation, it was agreed by the conducting officer and the claimant's representative that the transcript of a prior investigation conducted on September 30, 1980, involving a similar charge against another employee arising out of the same occurrence, would be incorporated in and made a part of the November 14, 1980, investigation. While we may look with askance on such procedure, the fact remains that the parties, by agreement and of their own volition, made the record in the case and the Board must accept the record as made by the parties.

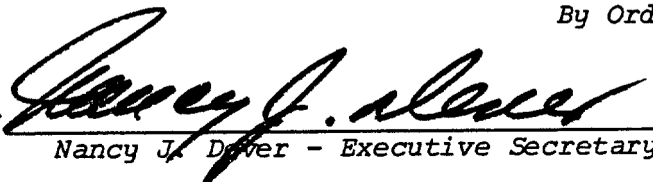
We have carefully reviewed the entire record of the November 14, 1980, investigation, and we find that substantial evidence was adduced in support of the charge against the claimant. The claim will, therefore, be denied.

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 13th day of June, 1984