

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 10898  
Docket No. 10801  
2-N&W-MA-'86

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall 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 the controlling agreement, Rule 37, but not limited thereto, when it arbitrarily and capriciously disciplined Machinist J. W. Bonham by assessing him a ten (10) day actual suspension following investigation held on November 10, 1982.

2. Accordingly, Machinist J. W. Bonham should be compensated for all time lost, including holiday pay for November 25, 1982, as a result of his improper suspension and his record should be cleared.

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.

The Claimant was charged with violation of Safety Rule General Notice D and a portion of Safety Rule 1235 on November 1, 1982 in that he improperly applied a socket to a chuck jaw adjusting nut which slipped, causing an alleged injury to himself.

Following the Investigation the Claimant was disciplined to the extent of a ten-day actual suspension.

The transcript discloses that he opened the chuck jaws on a freight car wheel boring mill with a three-quarter inch ratchet and a one-and-one-quarter inch socket. As the jaws opened, they moved the head of the ratchet and the attached socket slipped off the adjusting nut. The tools were being manipulated by the Claimant's own hand power. When the socket slipped, the Claimant, standing at the time, experienced an injury to the muscles in his back.

The Investigation disclosed that proper tools were available and that he could have taken the necessary time to have secured them had he chosen to do so.

There is sufficient evidence to support the Carrier's assessment of the 10-day suspension. The Claimant was not deprived of his rights under the working Agreement.

For the Organization to overcome the Carrier's action and its defenses, it must present and demonstrate competent evidence of a probative nature. Otherwise, assertions and innuendoes, no matter how vigorously or often made, are not the equivalent of proof that is essential to the Organization's position. The Organization did not overcome the Carrier's defenses.

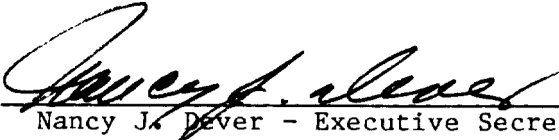
We will not substitute our judgment for that of the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1986.