

The Second Division consisted of the regular members and in addition Referee Ronald Nelson when award was rendered.

(Sheet Metal Workers International Association
Parties to Dispute: (
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1) That under the controlling agreement, Sheet Metal Worker, E. P. Michel was unjustly suspended from service on October 23, 1984 through November 1, 1984 resulting from an investigation that was held on October 5, 1984.

2) That, accordingly, the Carrier be ordered to pay the Claimant all wages lost in the amount of eighty (80) hours at the pro rata rate of pay as a result of the ten (10) working day suspension and to include the following.

- (a) Make Claimant whole for all vacation rights.
- (b) Pay premium on all health and welfare benefits as paid while in service including group life insurance.
- (c) Remove all charges brought against Claimant from his personal 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.

This matter comes before the Board by notice of the Organization following properly, but unsatisfactory, conducted attempts to adjust the differences on the Carrier's property.

The controversy arises from an Investigation, dated October 5, 1984, held on the property which was convened to determine the Claimant's responsibility, if any, "...in connection with (Claimant's) failure to wear proper eye protection while using an oxygen/acetylene torch beneath NW Locomotive 2806 at approximately 0245 hrs on September 15, 1984...."

Following the Investigation, Claimant was assessed a 10 day actual suspension, whereupon the Organization appeals claiming:

- "1) That under the controlling agreement, Sheet Metal Worker, E. P. Michel was unjustly suspended from service on October 23, 1984 through November 1, 1984 resulting from an investigation that was held on October 5, 1984.
- 2) That, accordingly, the Carrier be ordered to pay the Claimant all wages lost in the amount of eighty (80) hours at the pro rata rate of pay as a result of the ten (10) working day suspension and to include the following.
 - (a) Make Claimant whole for all vacation rights.
 - (b) Pay premium on all health and welfare benefits as paid while in the service including group life insurance.
 - (c) Remove all charges brought against Claimant from his personal record."

The Carrier claims:

- 1) This Board has no jurisdiction to hear this matter because the Organization's Claim as set out above is not the same in substance as that which was tendered by the Organization in the proceedings on the Carrier's property, and in the alternative,
- 2) Notwithstanding Item Number 1 of the Carrier's Claim, Carrier maintains that it met its burden of proof, that all procedural requirements were satisfied, and the discipline imposed was in keeping with the seriousness of the Claimant's actions.

Turning first to the jurisdictional issue raised by the Carrier, the Board has carefully examined the Submissions offered by both parties and is not persuaded by the Carrier's contention that the addition of Point "C" under Item Number 2 in the Organization's Submission to this Board results in a new claim which, as Carrier contends, was not properly handled below. Point "C" is essentially ministerial in nature and as such does not result in the creation of a new claim by the Organization. Accordingly, the Board finds that it has jurisdiction in this matter and will proceed to dispose of the substantive case on its merits.

The Organization contends that the Carrier's notice of Investigation fails to properly notify the Claimant in accordance with the Controlling Agreement. To the contrary, the Carrier's charge letter of September 17, 1984, contained information sufficient to apprise the Claimant of the charge against him so that he may develop a proper defense.

The record shows that on the day in question the Claimant, a Pipe-fitter, was performing service on his assignment which required Claimant to use an oxygen-acetylene torch. Claimant was in the process of repairing an air line on Locomotive NW2806, said task required Claimant to assume a kneeling position and look upward to see his work. The record is clear that during this process, Claimant was wearing eyeglasses prescribed by his eye doctor, and was not wearing the eye protection devices required by the Carrier. These requirements are set out in Carrier's Safety Rule Book, a copy of which was in the possession of Claimant, and the contents of which were known to Claimant by his own testimony.

The kernel of the Organization's appeal centers on the phrase "... prescribed eye protection..." as that phrase is used in Safety Rule 1042 of the Carrier's Safety Rule Book. The Organization contends that prescription eyeglasses, i.e. those obtained from an optometrist, optician, or ophthalmologist are synonymous with the term "... prescribed eye protection, ..." appearing in the Safety Rule. The Board declines to accept the Organization's interpretation of the phrase in question. It is clear that the phrase "... prescribed eye protection..." as used in this instance means that which is explicitly required by the Carrier. The record conclusively demonstrates that the Claimant's personal prescription eyeglasses do not satisfy the requirements of the "...prescribed eye protection..." as contemplated by the Carrier's Safety Rule.

The Board has examined the Organization's contention on appeal that the discipline imposed was extreme, unreasonable, arbitrary and an abuse of managerial discretion. In view of the program of safety practices instituted by the Carrier with an emphasis on eye protection, the existence of detailed Safety Rules pertaining to eye protection and the general knowledge of the seriousness of the subject of eye safety and protection, together with the Carrier's unchallenged statement that it considered the Claimant's prior record, the Board will not substitute its judgment for that of the Carrier.

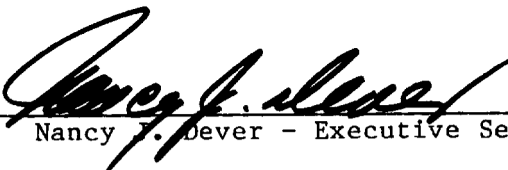
For the reasons cited herein, the Board must deny the Claim.

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 18th day of February 1987.