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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13516

Docket No. 13423

00-2-99-2-16

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(International Association of Machinists and Aerospace
(Workers

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Consolidated Rail Corporation arbitrarily and capriciously assessed Machinist T. L. Miller thirty (30) days suspension per Rule 6-A-4 (b) (1), following trial held on January 20, 1998. (Thirty days deferred suspension)

Accordingly, Machinist T. L. Miller should have his record cleared of any reference to the charges, as if the unjust discipline had not been imposed, and removal of the thirty (30) days deferred suspension.”

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.

Parties to said dispute were given due notice of hearing thereon.

The facts in this case are similar to those set forth in Second Division Award 13513, but there is a definite variation when it comes to the manner and method the Claimant used to destroy the clock.

All second shift employees were called to the cafeteria, and each was handed the clock. The Claimant, upon receipt, walked about three tables from where the clocks were being distributed, threw the clock to the floor and stomped on it.

For this act, an Investigation was held and he was found culpable for the charges assessed.

The same meeting referred to in Second Division Award 13513 occurred with the Claimant. At that meeting, the Claimant did request to be represented by his representative. When he was advised that they were not available because of a union meeting, the Claimant said nothing further about requesting their presence and proceeded to respond candidly to the questions asked as he did, subsequently in the Investigation.

The Claimant clearly violated Rule 4012(d), the first charge, and the third charge of putting himself and other employees in danger of sustaining a personal injury when he stomped on the box and then failed to pick up all the debris, leaving a potential for others to slip if they should step upon the broken pieces.

The Claimant has been with the Carrier about six years when this incident occurred. He has had no prior discipline. Under these circumstances, the 30 day deferred suspension is reduced to 15 days, with the notation of being guilty of only the first and third charges. The "conduct unbecoming" has not been substantiated. If the Claimant has lost any time in excess of 15 days, he is to be compensated for any time lost as provided in the Schedule.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 15th day of May, 2000.