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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13606

Docket No. 13486

01-2-99-2-77

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PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. Springfield Terminal Railway Company violated Rule 15 of the controlling Agreement, effective June 1, 1995, as amended, when by letter dated April 13, 1998 Carrier arbitrarily, capriciously and unjustly suspended Machinist Robert Bucknam for thirty (30) working days following formal Investigation/Hearing held on March 16, 1998.
2. Accordingly, the decision should be reversed, Machinist Bucknam exonerated of the charge(s), his record and personnel file cleared of any reference thereto. And he be made whole for any and all losses suffered as a result of Carrier’s arbitrary, capricious and unjust actions, including, but not limited to, time spent at formal Investigation/Hearing of March 16, 1998.”

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.

On February 24, 1998, the Claimant assisted a co-worker in setting the valves for pumping the diesel fuel out of the fuel tank of locomotive 208 so that work could be performed on the fuel tank. There is no dispute that the Claimant, an employee with 33 years of service, set the valves because the co-worker was relatively inexperienced and needed assistance in performing the assignment.

Both employees testified that they listened to the hose to determine if it was properly suctioning the fuel, and they both believed that it was. The Claimant then returned to his regular assigned duties servicing and inspecting locomotives at the fuel pad. His co-worker went to lunch. Several hours later, it was discovered that there had been a fuel spill of over 5,000 gallons from this locomotive, with several hundred gallons of fuel flowing into the Kennebec river. Through later Investigation, it was determined that, rather than draining the fuel out of the tank of the locomotive, the valves had been set in the other direction so that fuel was being pumped into the tank. When the tank was overfilled, the spill occurred.

After a Hearing held on March 16, 1998, the Claimant was found to be responsible for failing to properly set the valves in the fuel transfer system. The Claimant was assessed a 30-day suspension. His co-worker, a short-term employee with a history of disciplinary infractions, was discharged.

The Organization contends at the outset that the Claimant was not afforded a fair and impartial Investigation. It takes issue with the fact that the Claimant's record was included in its entirety in the Hearing transcript. Specifically, the Organization submits that the inclusion of a failed STOP and two letters regarding the need for the Claimant to improve his safety practices were improperly included in the record and were intended to prejudice the outcome of this matter.

The Board is in agreement that the use of the Claimant's record is wholly immaterial to the question of guilt or innocence with regard to the charges at hand. Moreover, those incident reports which did not result in discipline cannot now be used as a basis for determining the quantum of discipline to be assessed. Their purpose was to put the Claimant on notice of the Carrier's expectations but they did not constitute adverse action. Logically speaking, they are outside the scope of disciplinary review which the Carrier engages in when determining the proper penalty for a given offense.

In this particular case, however, we believe that the Claimant was not prejudiced or harmed by the inclusion of his entire record in the Investigation transcript because there is substantial evidence that the Claimant's negligence warranted strong disciplinary action by the Carrier. Although the Organization contends that the Claimant should not be held responsible for the spill, it is clear that he, and not some hypothetical saboteur, was the individual who improperly set the valves. Granted, the Claimant did so in order to assist a fellow worker. This was not his specific assignment that day. But having undertaken the task, the Claimant was responsible for completing it carefully and safely. He did not meet that basic standard of care.

So, too, do we find unpersuasive the Organization's defense that the Claimant was not properly trained, that there were no written procedures, that the valves were not labeled, and that the array of valves and pipes located within the pump house caused confusion. The fact of the matter is that the Claimant has substantial years of service and he admitted to performing this operation "quite a few times." There is no indication from the record that the Claimant reported having difficulty in turning on the proper valves in the past or on the date in question.

The Organization also strongly pressed for a finding that the Claimant was a victim of circumstance here. It asserts that, after the incident in question, the Carrier changed its methods so as to require that the engine work be performed on a fuel pad rather than in a sand pit, which easily leaked spilled fuel. In addition, the Carrier made changes to the markings on the valves so that they were more easily identifiable. According to the Organization, these subsequent changes in methods of operation demonstrate that the Carrier procedures, and not the Claimant's actions, were inadequate for the task at hand.

The Board rejects that argument. It is a well-established rule of law that subsequent remedial measures do not constitute proof of an admission of culpability. The Carrier took steps after the instant incident in furtherance of added safety. Once potential problems were discovered, the Carrier would have been remiss had it not acted. The after-the-fact safety measures of the Carrier do not absolve the Claimant of responsibility for his dereliction of duty.

In sum, the record fully supports the finding that the Claimant set the valves improperly. His carelessness caused the fuel to be pumped in the wrong direction, thereby contributing to the spill. The Claimant knew or reasonably should have known

that an error of this magnitude could have serious consequences. We cannot say, on the basis of this record, that a 30-day suspension was arbitrary, unreasonable or capricious.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 4th day of June, 2001.