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Award No. 13631

Docket No. 13489

01-2-99-2-89

The Second Division co ~~members~~ members and in addition Referee
Ann S. Kenis when award was rendered.

(Brotherhood Railway Carmen Division/

(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway violated the terms of our current agreement, in particular Rule 13.1 when they arbitrarily assessed a formal reprimand to Robert L. Bourgoin as a result of an investigation held on August 18, 1998.
2. That accordingly, the Springfield Terminal Railway Company be ordered to remove the discipline from file and record of Carman Robert L. Bourgoin.”

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 July 27, 1998, the Claimant, a 29-year Carman, was employed at the Carrier's car repair facility in Waterville, Maine, and was assigned on that date to make repairs to freight cars. While repairing the door on a box car, it became necessary to remove debris from the door track. The Claimant opted to burn the debris, which consisted of compressed paper and cardboard, out of the door track. While performing this operation with his cutting torch, a piece of debris fell onto the Claimant's leg, igniting his pants and causing a burn to his leg.

After an Investigative Hearing on August 18, 1998, the Claimant was issued a formal reprimand for failing to exercise due care in preventing injury to himself and for failing to be alert and attentive when performing his duties in accordance with Carrier Safety Rules.

The Organization raised several objections to the discipline. The first is in connection with a failed STOP that was presented to the Claimant as a result of his alleged violation of Carrier Safety Rules on July 27, 1998. The Organization argues that the Claimant was twice disciplined for the same offense when he was first issued the STOP and then was formally charged with the same Rule violations.

The Carrier rejects the contention that there was dual discipline in this instance. It argues that the issuance of a STOP gives it an accurate indication of employee compliance with its safety program and provides a means by which employees are notified of potentially unsafe work practices.

After careful consideration of the matter, the Board is of the view that the issuance of the STOP in this instance did not constitute discipline. It memorialized the disputed incident and informed the Claimant that his actions were not in compliance with the pertinent Safety Rules. The STOP memo is a training and notification tool, and as such, can be used to show that an employee was put on notice of the Carrier's expectations. While it is reasonable to assume that the discipline issued to the Claimant would have accomplished this same goal, we do not believe that the Carrier violated the prohibition against double discipline by issuing a STOP and then disciplining the Claimant for the same offense.

Of course, the future value of the failed STOP is limited. It can be utilized to show an employee's knowledge, but cannot be used as the basis for disciplinary action. In the instant case, the record does not support the notion that the STOP memo was

improperly relied upon by the Hearing Officer to determine guilt or that it resulted in more severe discipline than would otherwise have been imposed. Our findings in this regard are consistent with the weight of authority in the Second Division. See, e.g. Second Division Awards 13538, 13501; and compare Second Division Award 13403.

By the same token, the Board finds unconvincing the Organization's claim that the Hearing was less than fair and impartial. The Claimant and his representative were permitted to submit all evidence they desired, and were afforded full rights of examination and cross-examination of witnesses. We reject any suggestion that the Claimant was not afforded a fair Hearing or that he was denied due process by the manner in which the Hearing was conducted.

Another argument advanced by the Organization is that the Carrier failed to prove by substantial evidence that the Claimant was guilty of the misconduct charged. The Organization submits that, other than speculation and opinion, there is no probative evidence to support the Rule violation.

Based on the Board's review of the record, we find that the Claimant was properly cited for inattention to his duties. It is true that there were no witnesses to the event. The Claimant further testified that he has removed debris from box door tracks using a cutting torch on many hundreds of occasions, without injury or difficulty.

On this particular day, however, the wind caused a spark to land on the Claimant's clothing. As the Carrier witnesses convincingly testified, an employee using a cutting torch must remain alert to the possibility of falling, smoldering debris and must take precautions to prevent the debris from falling on clothing which can ignite. We find that the Carrier shouldered its burden of proving by substantial evidence that, had he been more attentive in the performance of his duties, the Claimant could have averted the situation and not suffered an injury. This is not to say that the Claimant's negligence can be proven by the mere fact that an injury occurred. But under the circumstances present on this record, we must conclude that greater vigilance was required on the part of the Claimant when burning debris.

The remaining question is the whether the issuance of a formal reprimand was an unreasonable exercise of the Carrier's discretion. Since this is the mildest form of progressive discipline, it cannot be concluded that the discipline imposed was unwarranted or unduly harsh. Accordingly, the claim must be denied.

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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 3rd day of July, 2001.