

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13756

Docket No. 13547

03-2-00-2-22

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. Springfield Terminal Railway Company violated Rule 15 of the controlling Agreement, effective June 1, 1995, as amended, when by letter dated June 28, 1999 the Carrier arbitrarily, capriciously and unjustly suspended Machinist Robert Gaudette for fifteen (15) calendar days after an investigation held on June 3, 1999.**
- 2. Accordingly, the decision should be reversed, Machinist Gaudette exonerated of the charge(s), his record and personnel files 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 June 3, 1999.”**

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.

As a result of charges dated April 28, 1999, investigation eventually held on June 3, 1999, and by letter dated June 28, 1999, the Claimant, a Machinist at Waterville, was assessed a 15 day suspension for conduct unbecoming an employee in that on April 21, 1999 the Claimant was insubordinate and hostile to Supervisor K. E. Bujnowski.

The record reveals that on April 21, 1999, Supervisor Bujnowski gathered employees in the lunch room for a safety talk after he noticed a lack of blue signal protection and that some employees were not wearing hard hats while working in the Engine House. According to Bujnowski, he began to write up a STOP form for the Claimant and the Claimant responded that he did not have time and was going back to the Engine House. Bujnowski states that he told the Claimant to come back to the lunch room in 15 minutes. However, the Claimant did not return within that time period. Bujnowski then sought out the Claimant and asked him to sign the STOP form. According to Bujnowski, the Claimant signed the form, handed it back to Bujnowski and said "... you wonder why things like this happen in Colorado."

The Claimant gives a different version of the events. The Claimant states that Bujnowski was hostile and swore at him. He also stated that the blue light was out, but had been fixed. The Claimant further states that he was working on a job that he was unable to leave and therefore had to leave the meeting in the lunch room. According to the Claimant, Bujnowski told the Claimant that he would like to see him in the break room in a little while and that another individual would come out to relieve him. Further, according to the Claimant, when Bujnowski came out to see him and gave him the STOP form to sign (which he did), "I was sarcastic and maybe a little rude, I told Mr. Bujnowski to have a nice night, pretty sarcastically and that was it." The Claimant denies making any statement alluding to Colorado.

Substantial evidence supports the Carrier's determination that the Claimant engaged in misconduct. Supervisor Bujnowski's version of the events differs from the Claimant's version. Because we do not have the opportunity to observe the witnesses, it is not the function of the Board to make credibility resolutions contrary to those made during the Investigation process which are supported in the record. In determining that the Claimant engaged in misconduct, Bujnowski's version of the events was credited and that determination finds support in the record. We have no reason to disregard that determination.

Thus, the record sufficiently shows that the Claimant left the lunch room and was instructed by Bujnowski to return in 15 minutes, which the Claimant did not do. That is insubordination. Further, when Bujnowski found the Claimant and had the Claimant sign the STOP form, the Claimant stated to Bujnowski, ". . . you wonder why things like this happen in Colorado." Given the shootings at Columbine High School in Littleton, Colorado, on April 20, 1999 - one day before the events in this dispute - and further given the Claimant's admission that, "I was sarcastic and maybe a little rude . . ." to Bujnowski which shows that the Claimant was in a frame of mind to make a less than cordial statement to Bujnowski, we find that substantial evidence supports the conclusion that the Claimant's statement to Bujnowski was a threat and therefore hostile as charged.

The Claimant received a 15 day suspension. The Claimant also had other disciplinary actions on his record. Under the circumstances, we do not find that a 15 day suspension was arbitrary for the demonstrated misconduct.

The Organization's procedural arguments do not change the result.

AWARD

Claim denied.

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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 1st day of October 2003.