

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13758

Docket No. 13551

03-2-00-2-21

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 16, 1999 the Carrier arbitrarily, capriciously and unjustly suspended Machinist Phil Davis for three (3) calendar days after an investigation held on May 20, 1999.
2. Accordingly, the decision should be reversed, Machinist Davis 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 May 20, 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 May 5, 1999, Investigation held on May 20, 1999, and by letter dated June 16, 1999, the Claimant, a Machinist at East Deerfield, was assessed a three day suspension for altering Carrier property and creating a potentially hazardous situation on April 27, 1999.

The record shows that on April 27, 1999, the Claimant was assigned to service locomotives on the fuel island. The Claimant was observed fueling with a set of channel locks wedged in the fuel nozzle handle which had the effect of nullifying the automatic shut off which prevents spills by detecting back pressure when the fuel tank is full. Tr. 6-11. The Claimant admits that he was observed using the channel locks in that fashion. Tr. 83.

Rule 36 of the Safety Rule Book states that "Employees are prohibited from altering, nullifying, changing design or in any manner restricting or interfering with the normal intended function of any device or equipment, locomotives, cars, or other railroad property." Substantial evidence therefore shows that by using the channel locks in the fashion shown on April 27, 1999, the Claimant violated that Rule.

Under the circumstances, we cannot find that a three day suspension was arbitrary.

AWARD

Claim denied.

Form 1
Page 3

Award No. 13758
Docket No. 13551
03-2-00-2-21

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.