

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13759

Docket No. 13553

03-2-00-2-29

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 Employee:

- 1. Springfield Terminal Railway Company violated Rule 15 of the controlling Agreement, effective June 1, 1995, as amended, when by letter dated August 30, 1999 the Carrier arbitrarily, capriciously and unjustly suspended Machinist David Swett for sixty (60) calendar days after an investigation held on August 3, 1999.**
- 2. Accordingly, the decision should be reversed, Machinist Swett 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 August 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 July 9, 1999, Investigation held on August 3, 1999, and by letter dated August 30, 1999, the Claimant, a Machinist at Waterville, was assessed a 60 day suspension for violation of Safety Rule 23 on July 1, 1999.

The record shows that on July 1, 1999, the Claimant was observed standing on a bar which was inserted into the fly wheel of the engine block on Locomotive 213. The Organization disputes the Carrier's assertion that the Claimant engaged in misconduct, but contends that in an effort to complete his assigned task on a jammed engine, the Claimant was not standing on the bar; the Claimant had one foot on the ground; and the Claimant was attempting to push the bar and free the fly wheel with the full force of his legs and all of his body weight.

Rule 23 provides:

"Standing or attempting to stand on improvised scaffolds or supports made of boxes, barrels, chairs, stools, or other unsafe means is prohibited."

The Organization is correct that Rule 23 does not specifically prohibit standing on a bar as the Claimant did (either with one or two legs). However, the burden here is on the Carrier to show through substantial evidence that the Claimant violated the Rule. Although not specifically addressed in Rule 23, it is certainly a reasonable interpretation of that Rule that "[s]tanding or attempting to stand on improvised . . . supports made of . . ." a bar is also encompassed within the scope of the prohibitions stated in the Rule. That conclusion is particularly warranted given Rule 23's provision that ". . . other unsafe means is prohibited." Substantial evidence therefore supports the Carrier's conclusion that the Claimant violated Rule 23.

Under the circumstances, we cannot find that a 60 day suspension was arbitrary. At first it appears that such a lengthy suspension does not fit the degree of demonstrated misconduct. However, the Claimant has a rather substantial prior disciplinary record concerning safety violations. See Second Division Award 13602

where the Board upheld a safety related 45 day suspension given to the Claimant and further discussed the Claimant's prior disciplinary record:

“. . . Unfortunately for Claimant, he did not correct his course of conduct and he was subsequently issued several disciplinary suspensions for safety violations. . . . Under these circumstances, it is clear that a 45-day suspension for a second violation of a rule which is viewed very seriously by the Carrier in not an abuse of discretion. . . .”

The purpose of discipline is to correct misconduct by sending a message to the employee through increasing amounts of discipline that he must conform his conduct to expectations of the Carrier's Rules and reasonable expectations of the workplace. The prior safety related suspensions including the 45 day suspension discussed in Award 13602 have not gotten the message through to the Claimant. Under the circumstances, a 60 day message in this case is therefore not arbitrary.

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 1st day of October 2003.