

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13766

Docket No. 13356

03-2-98-2-52

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Northeast Illinois Regional Commuter Railroad (Metra)

STATEMENT OF CLAIM:

“Dispute - Claim of Employee:

- (1) That the Northeast Illinois Regional Commuter Railroad Corporation(which hereinafter will be referred to as the "Carrier") violated the applicable provisions of Rule 29 of the December 16, 1987 General Rules Agreement, as subsequently amended, when, subsequent to an investigation held on May 21, 1997, the Carrier improperly and unjustly assessed "Letter of Formal Reprimand" on the personal record of 18th Street M.U. shop Machinists employee Cornelius C. Bell (hereinafter referred to as Claimant).
- (2) That, accordingly, the Carrier be ordered to remove the "Letter of Formal Reprimand" from the Claimant's personal service record and all reference to the hearing which led to the imposition of such unjust discipline.”

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.

The instant claim, filed on July 25, 1997, protests the Carrier's issuance of a formal reprimand to the Claimant for negligence in the performance of his duties by failing to advise his supervisor that a particular locomotive was past due an FRA required inspection and allowing the locomotive into service without such inspection in violation of both Employee Conduct Rules and federal law. The imposition of the protested discipline was the result of an Investigation held on May 21, 1997.

The Carrier argues that there is substantial evidence in the record to support the charge that the Claimant was negligent in conducting his inspection of Highliner Locomotive 1660 on April 29, 1997 by his admission that he failed to either verbally inform his supervisor that the car was past its mandated FRA 92 day inspection or place an "X" in the defect box on the 2B form. The Carrier contends that the Claimant's action in allegedly filling out a 2C form on the same unit the prior week and notifying his supervisor that the inspection date was coming up soon does not change the fact that the Claimant failed to act similarly when Highliner 1660 was actually overdue for inspection on April 29, 1997, and indicates that he understood his responsibility to report such fact to his supervisor. The Carrier acknowledges that Highliner 1660 was not scheduled timely for its 92 day inspection, Second Division Award 13433 and Public Law Board No. 4649, Case 6, upheld discipline of others involved, but contends that their mistakes cannot excuse the Claimant's improper performance of his duties. The Carrier asserts that the Claimant received a fair and impartial Hearing, that the Rules violations for which he was cited were proven by the evidence, and that the penalty imposed was lenient under the circumstances.

The Organization initially contends that the Carrier failed to conduct a fair and impartial Hearing as required by Rule 29, in that the notice of charges prejudices the Claimant's guilt and were not properly served upon him, and that the Hearing Officer was biased and conducted a scripted hearing designed to prove the

charges rather than establish the facts, and denied the Organization the opportunity to present relevant evidence at the Hearing, citing Second Division Awards 5223, 2923. The Organization argues that the evidence fails to establish that the Claimant was guilty of the charge of failing to notify his supervisor that Highliner 1660, on which he conducted a daily inspection on April 29, 1997, was past due the FRA 92 day inspection, pointing to the undisputed evidence that the Claimant recorded the last inspection date from the Blue Card on the 2B form complying with written instructions and that the Carrier failed to establish any written policy of any additional reporting requirement to which the Claimant was subject. The Organization notes that a Machinist cannot take a car out of service, and that it is the responsibility of the supervisor, upon reviewing the information on the form, to take exception to the inspection date and remove the car from service in compliance with the FRA, asserting that the Claimant's supervisor was disciplined for failing to do so, and his General Foreman improperly overlooked the scheduling of this car for its FRA mandated 92 day inspection, despite the Claimant's bringing the date to his attention the prior week while it was still in compliance. The Organization asserts that the claim should be sustained on both procedural grounds and the merits.

A careful review of the record convinces the Board that the Carrier failed to sustain its burden of proving that the Claimant violated Employee Conduct Rules by failing to follow reporting requirements concerning his daily inspection of Highliner 1660 on April 29, 1997, the basis for the underlying discipline. The only written Rule concerning Machinist Daily Inspection Reports identified by the Carrier's witness, Mechanical Foreman William Kenzel, who was neither the Charging Officer nor the Claimant's supervisor, was a Memorandum dated March 12, 1996, instituting the requirement that, in addition to recording Highliner car numbers inspected on 2B forms, the last inspection date of each car as it appears on the Blue Card is also to be noted. Kenzel testified that this is the only written Rule concerning recording last inspection dates that he is aware of, and it does not specify where such date is to be recorded on the 2B form. Kenzel acknowledged that the Claimant complied with this requirement by writing the car numbers and last inspection dates of all cars he inspected on April 29, 1997, including car 1660, on the 2B form. While Kenzel stated that it would have been proper procedure for the Claimant to verbally notify his supervisor that this car was overdue its 92 day FRA inspection and to mark an "X" in the defect box, he admitted that the Claimant's use of the defect box to record the last inspection dates was not technically improper. There was no evidence by the Carrier that such instructions were ever

given to the Claimant either verbally or in writing, and the Claimant denied ever being informed that he was to place an "X" in the defect box or that recording the last inspection date in that column was inappropriate. Unlike the situation in Second Division Award 13433 where the employee admitted failing to report the unit's last date of inspection, Kenzel acknowledged that the Claimant met that requirement in this case.

While the Board does not necessarily find an independent ground upon which to overturn this discipline on the basis of the conduct of the Hearing, the Hearing Officer's refusal to call the Charging Officer to testify at the Organization's request, makes it impossible to verify the Carrier's contention that the Claimant should have known of the additional requirement of notification directly to his supervisor in this case. The Carrier's reliance on the Claimant's conduct of notifying his supervisor on April 22, 1997 that car 1660 was coming up on its inspection date to support an argument that he knew that his responsibility was more than just recording the last inspection date is interesting, at the very least, considering that the Hearing Officer attempted to exclude such testimony as irrelevant to the charges of what occurred on April 29, 1997, and the Carrier argued that there was no proof that the Claimant actually did engage in such notification on April 22, 1997. In any event, the Board cannot find substantial evidence in the record to sustain the Carrier's burden of proving the charges against the Claimant in this case.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of October 2003.