

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13776

Docket No. 13650

03-2-02-2-6

The Second Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

**(Brotherhood of 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. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13 when they arbitrarily administered a two (2) day suspension to Wilfred L. Bennett as a result of an investigation held on August 24, 2000.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Wilfred L. Bennett in the amount of eight (8) hours pay for each workday he was withheld from service, commencing September 20, 2000 through and including September 21, 2000. Additionally, compensate him for attendance at this investigation and remove any correspondence in regards to this discipline from his personal record and file.”**

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 24, 2000, the Claimant was directed to move a welder which was on a wooden pallet. He used a forklift. During the move, the welder apparently shifted, fell from the pallet and was damaged.

By letter dated August 3, 2000, the Carrier directed the Claimant to attend a formal Hearing on August 16, 2000. The purpose of the Hearing was to determine whether the Claimant was negligent when he failed to secure the welder onto the pallet before attempting to move it.

After reviewing the evidence adduced at the Hearing, the Carrier notified the Claimant by letter dated September 26, 2000, that there was sufficient evidence to support his culpability. He was assessed a two-day suspension.

The Carrier discounts assertions by the Organization that procedural errors were committed in processing this case. The Carrier insists they had no obligation to cite specific Rules allegedly violated. The Carrier said this in no way would alleviate the Claimant from his responsibility to work safely and to protect Company property. In addition, the Organization's objection to the use of two Hearing Officers as well as its objection to the introduction of the Claimant's prior record has been upheld in prior Awards.

The Carrier contends that there was ample evidence to show employees are required to secure loads when transporting them by forklift. There was more than substantial evidence to show the Claimant failed to properly secure the welder before he moved it. Moreover, the Carrier maintains the Organization never denied there were several Safety Rules governing the movement of equipment by forklift. The Carrier insists the Claimant violated several of these Rules. The Carrier points

out the Claimant admitted he was familiar with these Rules and also admitted the welder should have been secured prior to the move. They say there are no mitigating factors which absolve the Claimant of the conclusion he was negligent.

The Organization defends the Claimant's decision not to secure the welder onto the pallet by maintaining that it was never a stated requirement. They reference the testimony of Carrier witnesses who admitted that they have observed unsecured equipment being moved by a forklift. Furthermore, they say, all indications are that the Carrier Officers never admonished these employees or did anything to correct the problem.

The Board has reviewed Petitioner's procedural objections carefully. The Board finds the only one which may have substance to be the Carrier's failure to call a material witnesses. Certainly, it may have been significant both to the Claimant's case and to the Carrier's operation if there was a practice of allowing employees to move unsecured equipment. However, we also appreciate that there are many conditions under which such moves could be made safely, if not wisely. In this case, the Claimant admitted the conditions were not conducive to moving unsecured equipment. He knew he would encounter potholes and uneven terrain. He also admitted the equipment should have been secured. Those admissions remove the need to produce other witnesses and support the charges against the Claimant.

As to the introduction of the Claimant's previous record, the Board concurs with the prior Board Awards submitted by the Carrier. It is permissible to review a claimant's previous discipline record for the purpose of determining the appropriate penalty once the current charges are proven.

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 24th day of October 2003.