

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13778
Docket No. 13652
03-2-02-2-11**

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

**(Brotherhood 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 suspended James P. Besemer from service for twenty (20) calendar days as a result of an investigation held on October 26, 2000.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman James P. Besemer in the amount of eight (8) hours pay, for each workday he was withheld from service, commencing November 9, 2000 through and including November 28, 2000. Additionally, he is to be compensated for attending this investigation and further, the carrier is to remove any correspondence in regards to this investigation 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 September 27, 2000, the Claimant was observed wearing safety glasses without side shields while he was working in Dover Yard. He reportedly was instructed by Manager Olson to put on his side shields before continuing to work, which the Claimant did. Shortly thereafter, the Claimant was again observed not wearing his safety glasses.

On September 30, 2000, the Manager issued a Notice of Investigation, the purpose of which was to determine the Claimant's culpability for violating Safety Rule 41, which requires "... eye protection and/or equipment must be worn when work requires, or when in the vicinity where hazardous work is being done."

The Claimant was determined guilty of the offense and assessed a 20-day suspension.

The Carrier argues the discipline was warranted when the Claimant's disciplinary history is taken into consideration. They contend the Claimant was aware of the Rules requiring the use of safety glasses at all times while at work, although he mistakenly maintained the use of side shields was not necessary. They insist the Claimant was wrong in his assertion and point out that many employees have been injured for failing to wear safety glasses where mandated.

The Carrier discounts the procedural errors raised by the Organization and maintains all of these issues have been settled previously in arbitration.

The Organization argues the Claimant was disciplined twice for the same offense. They say he was issued a STOP for violating Rule 41 and then was issued a Notice of Investigation for the same offense. Moreover, they say the discipline was issued for the Claimant's alleged failure to wear proper protective eyewear while working. They assert the Claimant was not performing any work at the time he was observed.

Furthermore, they contend he was wearing his bifocals which had the proper safety rating in order to determine what work needed to be performed. They say the Manager should have recognized the Claimant was merely examining the car to determine what would be needed in order to do the work. Clearly, they say, he was not performing any work which could have resulted in an injury.

The Organization objects to the Carrier's admission of the Claimant's disciplinary record. They offer that such evidence is prejudicial. Moreover, they submit the Claimant was punished twice for this offense; once when the STOP was issued and then again when he was assessed a 20-day suspension.

After reviewing the record, the Board must find against the Claimant. Unfortunately, it appears he has a cavalier attitude regarding safety issues. He has been disciplined several times and counseled numerous other times for violating Carrier Safety Rules. In this case, we believe there is substantial evidence he did not wear his safety glasses with side shields as he has been directed to do and as the Rule requires. Although the Claimant insists his prescription glasses were safety rated and necessary for him to examine the work to be done, he did not raise this argument until the Hearing. Therefore, it seems to be at best an afterthought. Regardless, the Rule is clear. If he is in the yard where work is to be performed, he is to wear safety glasses with side shields. If it is necessary, he must discuss with the Carrier the need to accommodate his vision.

The Claimant does not have that many years of service with the Carrier. In a relatively short period of time, he has an unremarkable record. Once the current charges were proven, it was appropriate for the Carrier to consider the Claimant's

past record in arriving at the level of discipline. Furthermore, we concur with other Neutrals who have held that the STOP is not disciplinary in nature. Therefore, the Claimant was not subject to double jeopardy.

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 24th day of October 2003.