

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13861
Docket No. 13744
05-2-04-2-22

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- "1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13.1 when they arbitrarily assessed a thirty (30) day suspension to Carman Kevin M. Dyer as a result of an investigation held on September 23, 2003.
2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman Kevin M. Dyer in the amount of thirty (30) days at the straight-time rate, if and when the Carrier suspends Carman Dyer, upon his return to work. Furthermore, all related benefits be afforded to Carman Dyer and that the Carrier be required to remove all information as a result of this investigation from his personal file and record."

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 Claimant was notified to attend a hearing by letter dated September 4, 2003. The Carrier alleged possible responsibility for an injury occurring August 20, 2003. On September 23, 2003, following one postponement, the hearing was held. Following the hearing, the Carrier notified the Claimant that he had been found guilty as charged and was assessed a thirty (30) day suspension pending his return to work.

The record of this dispute indicates that on August 20, 2003, the Claimant was assigned to remove rust particles between the interior and exterior walls of Passenger Car Number 43. He reported that while vacuuming with a shop cleaner, the hose stuck and he pulled his arm back which was severely cut by a razor sharp saw cut edge on one of the un-removed side sheets. There is no dispute that the resultant injury was serious and required stitches and a splint to the right arm.

The Carrier found that the Claimant was responsible for his injury. It argued that he had been the only employee working on Car 43, had personally created the razor sharp edge and took no precautions to avoid injury. He did not file down exposed edges, wear appropriate protective clothing or take proper precautions. The Carrier maintains that the Claimant knew better and failed to properly perform his responsibilities. Therefore he was proven to be negligent as alleged. It considers the discipline commensurate with the seriousness of the Claimant's actions

The Organization has strongly argued that the Carrier failed in its burden of proof. The Claimant was not proven negligent. In fact, the work was behind schedule, the Claimant pressured to complete his assignment, and the appropriate protective clothing was unnecessary that day. The Organization argues that the Claimant was assigned to a road truck, not structural welding for which a leather jacket might have been needed. It considers the allegation unproven. As for the

discipline, the Organization argues it was not progressive. It also considers the Carrier's action excessive.

The Board has carefully reviewed the full circumstances of the injury, testimony and on-property record. We find that there is sufficient probative evidence of guilt. The Carrier has charged the Claimant with "Negligence in the Performance of Duties." There is a clear incident in this record of the Claimant working directly around extremely sharp and exposed metal edges. There is no evidence of the Claimant taking any real precautions to protect himself from those edges in the area in which he was doing vacuuming. Through all of the discussion and testimony of jackets, gloves, duck tape or filing down the edges, there is no evidence that the Claimant did anything.

The Board has studied the Organization's strong defense of the Claimant's behaviors. We have reviewed the Claimant's testimony. We conclude that even if the Claimant were pressured to complete his assignment, he failed to take proper precautions. The Accident Investigation could neither replicate the event, nor determine what caused the vacuum hose to stick. We are persuaded by all of the evidence that the Claimant was negligent. The Board has reviewed the Claimant's disciplinary history with the Carrier. We will not disturb the Carrier's judgment. The claim is denied.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 27th day of July 2005.