

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14091
Docket No. 13922
14-2-NRAB-00002-110001

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

(United Transportation Union
PARTIES TO DISPUTE: (
(Rochester and Southern Railroad

STATEMENT OF CLAIM:

“Re: Kurt Lohrmann disciplinary letter of July 12, 2010 assessing (15) days of actual suspension and (30) overhead days until June 12, 2011 to commence July 28, 2010.

The organization is appealing the assessment of any discipline against Mechanical employee Kurt Lohrmann based on the carrier’s notice of May 27, 2010. It is our contention that the record should be expunged of any reference to this incident based on the failure to support the allegation of insubordination placed against the employee by Peter Radesi, General Mechanical supervisor of RSR. It is further alleged that the failures claimed by the carrier fall to the responsibility and failure of the supervisor to adequately monitor the work of the employees who are subordinate to him.”

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 assigned as a Mechanic at the Carrier's Restof Mechanical Facility, in Restof, New York. By notice date May 27, 2010, the Claimant was instructed to report for a formal Investigation to determine his responsibility, if any, in connection with the following:

“. . . the report that on Tuesday, May 18, 2010, at the end of your tour of duty at 1700 hours, you departed the Company property prior to completing your assigned duties (insubordination) leaving the Depot Track Switch at the Restof Shop, Restof, NY, locked and Blue Flagged resulting in delay to the Carrier's operation and the Carrier incurring unnecessary cost, while you were performing service as a R&S Mechanical employee.”

Following the formal Investigation, the Carrier assessed the Claimant a 30 working-day suspension to be held in abeyance for a period of one year. However, the assessment of this discipline required the Claimant to serve a 15 working-day suspension that had been held in abeyance due to a previous disciplinary action. The notice of discipline indicated that the Claimant was being disciplined only for leaving the switch locked and blue flagged and not for any delay to the Carrier's operation or the incurring of additional Carrier expense.

The facts as brought out at the formal Investigation indicate that on May 18, 2010, the Claimant installed a switch lock and blue flag on the Depot Track at the Restof Mechanical Facility at the commencement of his tour of duty. It is not disputed that after the Claimant completed his tour of duty, he left the property and left the switch locked and the blue flag displayed. After this fact was reported to the Claimant's Supervisor, another Mechanical Department employee was called to remove the switch lock and blue flag so that the track could be subsequently worked on by a Transportation Department crew. At the formal Investigation, the Claimant admitted that he had left the switch lock on and the blue flag displayed and that this was contrary to previous instructions that he had received several months prior to this incident. The Claimant testified that he had personal matters on his mind at the time and simply forgot to unlock the switch and remove the blue flag.

The Board finds that there is substantial evidence in the record, including the Claimant's own admission that the Claimant failed to properly perform his duties when he left the property without removing the switch lock and removing the blue flag despite previous verbal instructions to do so. While the Board does not agree that the Claimant's failure to follow proper procedures rose to the level of insubordination as urged by the Carrier, the Claimant did display a disregard for performing his duties in a manner consistent with the Carrier's Rules and regulations.

Prior to discussing the propriety of the discipline assessed herein, the Board feels it necessary to address the Organization's contention that on two prior occasions, the Claimant received disciplinary suspensions after waiving his right to a formal Investigation in connection with other admitted to Rules violations in contravention of Rule 34 of the controlling Agreement. Specifically, the Organization contends that these disciplinary actions were invalid due to the lack of active participation by the Claimant's Union representative. The Board notes that while this issue was discussed during the on-the-property handling of this case, the actual claim as submitted on the property and as set forth in the Organization's September 1, 2010 Notice of Intent, deals with the discipline assessed in connection with the May 27, 2010, Notice of Investigation. If the Organization considered the previous disciplinary actions to be improper for whatever reason, it was incumbent upon the Organization to make a timely appeal of such actions at the time they occurred. The Board has neither the jurisdiction nor sufficient facts before it to make a ruling on this facet of the Organization's position.

Relative to the discipline assessed herein, the Board does not find a 30 working-day suspension, held in abeyance for one year, to be arbitrary or capricious especially in light of the fact that during the Claimant's relatively short tenure with the Carrier he has been disciplined on two previous occasions for violation of the Carrier's Rules. While it is true that the assessment of discipline in the present case required the Claimant to serve a previous 15 working-day suspension that had been held in abeyance, the Claimant was aware and agreed to this disposition when he waived his rights to a formal Investigation in connection with the previous matter. Accordingly, the Board finds no reason to disturb the discipline assessed in the case at bar.

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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 25th day of November 2014.