Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7118
Docket No. 6827
2-SOU-CM-'76

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

Parties to Dispute: (System Federation No. 21, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Southern Railway Company

Dispute: Claim of Employes:

1. That under the current Agreement, Carman E. D. Mullins, Jr., Spartanburg, S. C. was unjustly suspended from service on October 2, 1973.

2. That accordingly, the Carrier be ordered to return Carman E. D. Mullins, Jr. to service with all rights due him under the Agreement, including health and welfare and retirement benefits, and beginning October 2, 1973 he be paid for all time lost.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Claimant, E. D. Mullins, Jr. was a Carman at Carrier's Hayne Shop in Spartansburg, South Carolina with service entry date of January 22, 1968. Claimant's major duty at Hayne Shop was as a welder using Arc Welding and Burning Equipment.

On or about September 22, 1972, the Manager of Hayne Shop posted and circulated among employees a Safety Bulletin which quoted pertinent parts of a safety policy adopted by Carrier on or about June 2, 1971 as follows:

"ALL EMPLOYEES:

Due to problems created by some of our people not understanding the Company rules regarding allowable limits on the length of hair, beard,

"mustache, and side burns, I am quoting below parts of the applicable rules:

> 'Employees. . . . . must, for the sake of safety, keep their hair cut so that it does not extend beyond the collar on the back, over the ears on the side, or over the eyebrows on the front. Employees who allow their hair or facial hair to grow beyond these limitations will not be allowed to perform any arc welding or burning . . . . . unless they make adequate provisions to cover their hair. Employees . . . . . must, for the sake of safety, keep all facial hair (including beards, mustaches, and side burns) under one inch in length . . . except when adequately protected by a full length face shield.'

The provisions having to do with hair cover or face shields intend that an employee will wear such equipment at all times on most jobs at Hayne Shop. The foregoing quotations are taken from Company rules, and are not subject to local interpretation. The Southern Railroad is under no contractual obligation to those who do not obey its rules while employed with it."

Approximately one year later, or September 28, 1973, while working his regular assignment as welder Claimant was advised by his foreman his hair length was in violation of the foregoing rules. The foreman instructed Claimant to report for work on his next regular workday with either his hair cut or with a hair net to hold his hair up while welding. On October 2, 1973 Claimant reported for work with neither a hair cut nor a hair net and refused to do either. Claimant was suspended pending investigation by the Shop Manager, who again advised him he was violating safety rules and told him he could return to work on October 3, 1973 if he complied with the safety rules by either 1) cutting his hair or 2) wearing a hair net. Claimant did not report for work on October 3, 1973, formal notice of hearing and investigation was issued and the hearing was held October 5, 1973. Thereafter, by letter dated October 12, 1976 Claimant was advised as follows:

> "With reference to the charges of failure to obey Company safety rules, in that you have allowed your hair to extend below the collar, and your refusal to wear a hair net, as is provided as an option in the said safety rules, an examination of the transcript of the investigation held in my office on October 5, 1973 indicates the charge should be sustained. You are hereby suspended from the service of the Southern Railway System for 30 days, with such suspension running from October 2 until October 31, 1973, or until such time as you comply with the safety regulations cited, but for not less than 30 days.
>
> If you comply with the safety rules pertaining to hair length, you may return to work on November 1, 1973 with no impairment of your seniority, vacation, or pass rights."

Confined to the positions raised on the property, the Organization claims herein that the suspension was unjust and in violation of Rule 34 because there was not just and sufficient cause shown on the record and the rule was discriminatorily applied. Carrier asserts that the record supports a finding of failure to obey safety rules which were reasonable and uniformly enforced; that the hearing was fair and impartial; and, that the discipline assessed was reasonable.

We have considered the record on these points carefully. In our judgement the prima facie rule is reasonable and the transcript of hearing amply demonstrates Claimant's definite refusal to comply therewith. In this connection we quote from an exchange between Claimant and the hearing officer on October 5, 1973 as follows (Emphasis added):

"Q. Mr. Mullins, you were asked if you had been furnished a copy of the Safety Rules and you were also asked if you had ever read the rules specifically pertaining to hair. Did you read this bulletin when it was put on the bulletin board about hair length?

A. Yes, I did, Mr. Gerson.

Q. And has the rule subsequently been read to you. Was it read to you prior to today, also?

A. You mean the bulletin?

Q. In the course of other discussions about your hair length, has this rule been quoted or read to you?

A. Yes, I can't say it's been read but I'm sure - it's been quoted to me, I'm sure.

Q. But you did read the bulletin which pertains to hair length?

A. Yes I did.

Q. Did you make the statement that you would wear your hair as you pleased rather than conform to the Company's rules pertaining to hair length.

A. I didn't say that I would wear my hair as I pleased, no.

Q. Did you state in the preliminary investigation that if it came between losing your job or cutting your hair, you would lose your job?

A. I said that if it came to the fact of me - - yes I did.

Q. You did say that?

A. Yes.

Q. Do you still take this position that you will neither wear a hair net nor cut your hair above your collar?

A. I won't no - I will not.

"Q. I beg your pardon?
A. No Sir.

Q. You will not wear a hair net nor cut your hair above your collar, is this what you are saying?
A. Yes."

We can find no persuasive evidence of record that the safety rule regarding hair length for employees using arc welders and burning equipment was unreasonable in its application or discriminatorily enforced. Nor can we conclude that a 30-day suspension for its flagrant violation was arbitrary unreasonable or capricious. Claimant has had at all times after October 31 1973 within his power the ability to return himself to his job by compliance with the rule. He has chosen not to do so and we shall not do it for him. The claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of August, 1976