

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That in violation of the current agreement, Mr. Edward Gutierrez, laborer, Chicago, Illinois was unjustly suspended for fifteen days (January 20 thru February 3, 1981) from service following a hearing held on the date of January 14, 1981.
2. That, accordingly, Chicago and NorthWestern Transportation Company be ordered to compensate Mr. E. Gutierrez for all time lost at the pro rata rate, and any reference to this incident stricken from his 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 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 waived right of appearance at hearing thereon.

The Claimant, Mr. Edward Gutierrez, was regularly employed as a Laborer by the Carrier at the M19-A Diesel Shop, Chicago, Illinois. On January 3, 1981, the Carrier sent a directive to Claimant, instructing him to appear for a formal investigation in connection with the following charge:

"Your responsibility for violation of Rule No. 73 of the C&NW General Regulations and Safety Rules at approximately 2:00 p.m. on January 3, 1981; specifically, you were not wearing eye protection while washing the exterior of Locomotive 147 with chemical cleaners."

Following the hearing, Mr. Gutierrez was assessed a 15 day suspension. This claim now before this Board was filed for the removal of the discipline and pay for time lost.

We find that substantial evidence of record supports the Carrier's finding that Mr. Gutierrez was responsible for violating Rule No. 73 of the General Regulations and Safety Rules. Shop Superintendent Mr. Rambhajan testified that he observed Mr. Gutierrez and another employe actively washing the engines without safety glasses. Mr. Rambhajan testified that when he told Mr. Gutierrez to put his glasses on, he removed them from his pocket and applied them to his face. This testimony is substantial evidence in support of the Carrier's finding

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Award No. 9520
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2-C&NW-FO-'83

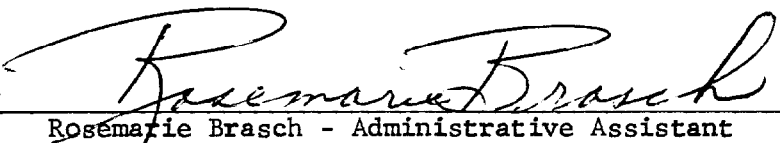
of responsibility. Mr. Gutierrez had received a prior Safety Reminder for not wearing safety glasses while spray washing a locomotive on April 10, 1980. We find that the discipline imposed is neither arbitrary, capricious nor excessive. We will deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June 1983.