

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Carrier improperly dismissed Machinist James N. Durand (hereinafter referred to as Claimant) from service on July 22, 1981.
2. That the Carrier be ordered to immediately restore Claimant to service with compensation for all wage loss from date of dismissal to date of restoration to service.

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 employees involved in this dispute are respectively carrier and employes 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 entered the service of the Carrier on October 2, 1967. At the time of the events giving rise to the instant claim he worked as a Machinist at the Carrier's Topeka, Kansas facility. As a result of a formal investigation held on July 16, 1981, the Claimant was removed from service for being insubordinate by failing and refusing to wear his safety helmet in the proper manner and for being careless of his safety on June 24, 1981.

On June 22, 1981 the Claimant was instructed by Assistant Superintendent of Shops M. W. Puett to wear his safety helmet at all times while working in the Shop. Such instructions were prompted by three (3) eye injuries sustained by the Claimant who stated that the injuries were caused by foreign matter entering his eyes from the top of his goggles.

On June 24, 1981 Relief Foreman E. J. Thomas noticed that the Claimant had his safety helmet tied to his "buttocks" or as the Claimant said, strapped to his "left hip pocket" while he performed his regularly assigned duties. When Foreman Thomas asked him what he was doing, the Claimant responded by saying that he "didn't want to disobey a direct order and that he "was told to wear his hard hat and that's what he was doing". The Claimant, it should be noted, had replaced his safety hat with a baseball-style cap.

The Board concludes that the Claimant blatantly substituted his own judgment for that of supervision after having been specifically instructed by his Supervisor to wear his hard hat. He also manifested a contempt or disdain for Management's instructions by strapping the safety hat over this "buttocks" or "left hip pocket", because he "didn't want to disobey a direct order". Accordingly, the Claimant violated Rule 16 of the General Rules which provides in relevant part that "Employees must not be careless of the safety of themselves" and "Employees must not be indifferent to duty, insubordinate ***".

There is nothing in the record to warrant the conclusion that the Carrier harassed the Claimant or applied the safety rules in an unequal manner. Furthermore, it is of no avail to the Claimant that the safety helmet was inconvenient or that the wearing of ear protectors "makes it difficult to wear a hard hat".


In light of the particular facts of this case, the Board is of the opinion that the Claimant should be reinstated with seniority rights unimpaired, but without back pay. Further incidents of this nature could result in disciplinary action.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1985.