Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10696
SECOND DIVISION Docket No. 10615
2-N&W-CM-'85

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That the N & W Railway Company violated the controlling agreement of September 1, 1949, as subsequently amended, when on August 25, 1982, Car Repairer J. L. Chittum, was given a formal investigation resulting in an unjust assessment of a five (5) day deferred suspension against his personal record. Also, due to failure to maintain a clear record while on probation J. L. Chittum was suspended for thirty (30) calender days, effective September 18, 1982 through October 18, 1982. (Exhibit C-1)

2. That the investigation was improperly arrived at, and represents unjust treatment within the meaning and intent of Rule No. 37 of the Controlling Agreement.

3. That because of such violation and unjust action, the Norfolk & Western Railway Company be ordered to remove the five (5) day deferred suspension from J. L. Chittum s personal record and compensate him 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 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.

Claimant was employed by the Carrier as a Car Repairer at Carrier's facility at Shaffers Crossing, Roanoke, Virginia. On August 4, 1982, the Carrier's Assistant to the General Manager of Safety spotted the Claimant outside the Yard Office wearing non-industrial strength street glasses, a hard hat and mono-goggles on top of the hard hat. The Claimant was informed that proper eyewear required use of the mono-goggles, and he was subsequently charged on August 6, 1982, with a formal investigation:

"to determine your responsibility incident to the proper performance of your duty during your tour of duty on the first shift, from 7:00 A.M. August 4, 1982, to 3:00 P.M. August 4, 1982, in that you were wearing unauthorized eye protection while on duty."

The Organization protested the Carrier's use of a tape recorder at the formal investigation. As this Board recently stated in Award No. 10357 involving the same Claimant, the use of a tape recorder by the Hearing Officer to record the investigation is not restricted by the terms of the Agreement. See also, Second Division Award Nos. 9973 and 9379. As stated in Award No. 9379, the use of tape recorders at investigative hearings does not per se result in a diminishment of the fairness of such hearings. The Organization has not pointed to any specific instances in this case where the use of the tape recorder operated to deny Claimant a fair hearing.

A careful review of the Organization's contention that an imprecise charge was made against Claimant in violation of due process is also without merit. In a multitude of prior awards, this Board has held that failure to recite a specific Rule in the Notice of Charge does not constitute automatic error in the proceedings. The charge against Claimant notified him of the time, date and nature of the alleged offense. There is no showing in this record of a Notice of Charge so imprecise and at variance with the evidence presented at the investigation that this Board can find Claimant was prejudiced in the presentation of an adequate defense on his behalf.

Carrier argues that notice of the requirements for proper eye-protection was given to all personnel at the Roanoke terminal. The Organization does not contest the Carrier's position in this regard, and did concede that the Mechanical Department employees were subject to instructions that all departmental personnel must wear proper eye protection whenever they are required to wear a hard hat. There is no evidence that street glasses are an appropriate substitute for Safety Glasses or mono-goggles. Further, the Organization acknowledges it was a policy that hard hats were required to be worn at all times by department personnel in the yard area where Claimant was seen not wearing his mono-goggles. Whether or not employees from another department were required to wear eye protection equipment in the yard is immaterial to the instant charge.

Claimant testified that he had to remove the mono-goggles because they fogged-up and reduced visibility as he walked through the yard. There was also evidence, however, that Claimant had access to the anti-fogging material for use with his mono-goggles. There was no evidence that Claimant used the anti-fog material, or made an unsuccessful effort to do so because such material was unavailable. The record contains insufficient evidence to support Claimant's safety contentions.

This Board finds that the record contains sufficient, credible evidence that Claimant violated Carrier's eye protection policy, and Safety Rules 1041 and 1042. As stated in P.L.B. 3900, Award No. 4, involving identical parties to this dispute:

> "Safety in the environment of the work place is often a shared responsibility between management and employees. The Carrier has met its obligation under the facts of the instant appeal by providing ample eye protection to Claimant at its expense. The responsibility for proper use of such equipment which is designed for the employee's own protection, and to which the employee has ready access cannot be shifted to the Carrier and its supervisory staff."

The Board finds the penalty imposed to be neither unreasonable, capricious nor excessive.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1986.