

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

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation (AMTRAK) violated Rule 24 of the scheduled Agreement dated September 1, 1977, but not limited there-to, when it arbitrarily and capriciously assessed Machinist C. Riley thirty (30) days suspension following investigation held on April 25, 1986, for alleged failure to follow instructions and being discourteous.

2. That accordingly, a decision should be reversed, Machinist C. Riley be made whole for all losses and his record cleared of any reference to the charge.

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.

On March 21, 1986, the Claimant was approached in the shop by his Supervisor who instructed him to put on his safety glasses. As the Claimant was wearing glasses at the time, a discussion ensued regarding the appropriate eyewear. Claimant's Supervisor then allegedly issued the Claimant a pair of safety coverall goggles which the Claimant allegedly threw in the garbage. At this point, the Claimant's Supervisor issued him a safety non-compliance citation which Claimant allegedly burned with a lighter.

As a result, the Claimant was notified by letter dated April 1, 1986, to report for a formal Investigation to determine whether or not he had, in fact, violated NRPC Rules of Conduct B, F.1, and L. An Investigation was held on April 25, 1986, and as a result of that Investigation the Claimant

was notified by letter dated May 9, 1986, that he was assessed a 30 day suspension commencing July 26 through August 24, 1986.

It is the position of the Organization that the Carrier arbitrarily and capriciously disciplined the Claimant without any substantial or probative support for a finding of guilt.

The Organization argued and presented evidence that the Claimant was wearing a pair of safety glasses prior to being instructed to wear a different pair of safety glasses by the Supervisor; that the Claimant did not throw the safety glasses presented to him by the Supervisor into the trash but, rather, placed them in a box that was on top of the garbage can so that he could take off his own safety glasses. The Organization contends and presented evidence to the effect that the complaining Supervisor and another Supervisor had conflicting views regarding which type of safety glasses should be worn by the employees. The Hearing Officer established that the safety glasses allegedly worn by the Claimant at the time he was given a new pair of safety glasses by the Supervisor were essentially the same type of safety glasses. Organization witnesses testified that the Claimant wore safety glasses over his street glasses and that he wore coverall type glasses. The Claimant and the Organization deny that the Claimant was presented a 490 safety citation by the Supervisor and further deny that he set the citation on fire with his cigarette lighter. The Claimant states it is traditional for an employee to be presented with a 490 safety citation with his social security number on it and which he signs. The Claimant states that no such document is in existence. The Claimant further argues that the area in which the Supervisor states he issued the safety citation to the Claimant, that being the tool cage, is a heavily traveled area and produced evidence substantiating the fact. The Organization argues that the Supervisor's assertion that he presented the safety citation in the tool cage with no witnesses is incredible.

Finally, the Organization states that the Carrier did not meet its burden of proof in establishing that the Claimant violated the Rules, above.

The Carrier presented evidence to the effect that the Supervisor observed the Claimant at 8:45 A.M. on March 21, 1986, in the shop wearing his personal glasses which were not approved safety glasses. The Supervisor then furnished the Claimant a pair of coverall goggles which Claimant then threw into a trash receptacle. The Supervisor then issued the Claimant a safety observation Form NRPC 490, indicating Claimant's failure to comply with Safety Rule 1050 which Claimant destroyed by setting it afire with his cigarette lighter. The Carrier states that there were no witnesses to either of these confrontations. The Carrier contends that the Claimant's denial of the pertinent aspects of the incidents is to be expected and constitutes nothing more than a self-serving attempt to make it appear that he fully complied with the Supervisor's instructions, which he did not. The Carrier relies upon the same evidence relied upon by the Organization; that evidence being the Organization's witness who testified that the Supervisor took a pair of safety glasses "out of the garbage" or from a "box next to the garbage" while the Claimant

was cleaning his street glasses. The Carrier contends that contrary to the assertions raised by the Organization, there is substantially more than a "scintilla" of credible evidence in the record to support the Carrier's finding of guilt. The Carrier reminds the Board that it is not the function of the Board to determine the credibility of the witnesses but, rather, to determine if there is substantial evidence of credible value to support the Carrier's assessment of discipline.

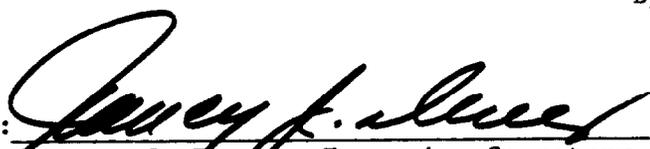
There are two issues before the Board. The Board must determine if there was substantial evidence to support the Hearing Officer's findings that the Claimant disregarded the instructions of his Supervisor and threw the safety glasses into the trash can. In finding that the Claimant did in fact throw the goggles into the trash can, the Hearing Officer relies upon the testimony of the Claimant's witness who stated he saw the Supervisor retrieve the safety glasses either from the trash can or from a box next to the trash can. This evidence, relied upon by the Hearing Officer, when combined with the Claimant's testimony that he placed the safety glasses in a box on the trash can is not sufficient to substantiate the finding that the Claimant threw the safety glasses into the trash can. While it is apparent from the record that the Supervisor did not consider the Claimant's actions in compliance with his instructions, the Board fails to find that substantial evidence was presented to establish that the Claimant openly and notoriously was insubordinate. The second issue before the Board is whether or not the Hearing Officer's findings were substantiated by evidence to the effect that the Claimant destroyed the 490 safety citation. The fact that an employee destroys such a citation is not, in and of itself, a cause for discipline. What is crucial in making such a determination is how and where such destruction takes place. The repeated and consistent testimony of the Supervisor was not rebutted by the Organization regarding this incident. Notwithstanding the Board's conclusion regarding the issuance of the safety glasses, the Board concurs with the Hearing Officer's conclusion that a 490 safety citation was presented to the Claimant and that he did destroy it. Nothing on the 490 provides a place for the Claimant's signature. The Board notes that while the Claimant resorted to self-help, he failed to take advantage of the grievance procedure that would have resolved the issue of the safety glasses and the safety citation. The discipline is reduced from a thirty (30) day suspension to a fifteen (15) day suspension. The Claimant shall receive all lost wages and other benefits derived from the Agreement from the 16th day to the 30th day of the suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1989.