

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12590
Docket No. 12551
93-2-92-2-76

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

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

"DISPUTE AND CLAIM OF EMPLOYEES:

- (1) That the Norfolk & Western Railway Company violated the controlling Agreement, when they unjustly suspended Machinist J. D. Overbay, Roanoke, VA., from service without pay, beginning October 23, 1989, and ending on October 27, 1989.
- (2) That accordingly, the Norfolk & Western Railway Company be ordered to pay Machinist J. D. Overbay for all lost time wages, with all rights unimpaired and clear his record of the charges."

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.

Following a number of postponements, a hearing was held on September 27, 1989 on the charge that the Claimant had violated one of the Carrier's Safety Rules. On October 18, 1989, the Carrier advised the Claimant that he failed to wear hearing protection and

failed to protect his eyes by wearing his safety glasses on his forehead.

The Board has carefully reviewed the transcript of the hearing. The Carrier's General Foreman testified at that time that he observed the Claimant and that he was not properly utilizing his hearing and eye protection equipment. Moreover, the Claimant's own testimony shows that he was guilty of the charge. His defense that, under the circumstances at the time, he did not have to comply with safety requirements is not reasonable. We reach this conclusion because the Claimant's work area requires hearing and eye protection. In view of this requirement, the Claimant may not choose when he will protect himself.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 15th day of September 1993.