

CORRECTED

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 12697
Docket No. 12717
94-2-93-2-83

The Second Division consisted of the regular members and in addition Referee John F. Hennecke when award was rendered.

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

STATEMENT OF CLAIM:

- "1. That the Norfolk Southern Railway Company violated the controlling Agreement, Rule 34, but not limited thereto, when they unjustly disciplined Machinist D. E. Daughtee, without the benefit of representation or a proper investigation. The assessed discipline was a suspension of seven hours without pay on May 10, 1991, and an absenteeism update letter as a result of the suspension, placed in Machinist Daughtee's file.
2. That accordingly, the Norfolk Southern Railway Company be ordered to remove the absenteeism update letter placed in Machinist Daughtee's file and compensate him for all lost time wages (7 hours)."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 May 10, 1991, Claimant was employed by Carrier as a Machinist at the Chattanooga System Assembly Shop in Chattanooga, Tennessee. It is undisputed that on this date Claimant reported for work without required safety equipment (safety glasses/safety side shields) previously issued to him by Carrier. Nor is it disputed that eye protection is required for all employees working in the System Assembly Shop, including Claimant. Approximately one hour after commencing his tour of duty which began at 3:00 P.M., Claimant was approached by his General Foreman, who asked Claimant why he was not wearing eye protection. Claimant allegedly advised his General Foreman that his eyes had been bothering him and he had decided to wear his personal glasses rather than his usual safety glasses; however, Claimant had left his side shields at home. At this point, the parties' version of the events which followed diverge.

The Organization alleges that the General Foreman accused Claimant of being in violation of Safety Rule 1040, told Claimant to go home, and placed a letter of absenteeism in Claimant's file. The Organization contends that Carrier's action constituted discipline and that Claimant was denied his right to a fair and impartial investigation and his right to representation, in violation of Rule 34--Discipline.

Carrier, on the other hand, alleges that the General Foreman and Claimant searched for an extra pair of plastic side shields in the safety locker and in the General Foreman's lockers, without success. The General Foreman then offered Claimant two styles of plastic wraparound safety glasses to cover Claimant's prescription glasses, neither of which Claimant found satisfactory. The General Foreman then offered to allow Claimant to mark off for the purpose of going home to retrieve his own side shields; however, Claimant declined the offer on the basis that it was not worth a round trip of 80 miles to his home to obtain the side shields. At this point, Carrier alleges that Claimant chose to conclude his tour of duty and was allowed to mark off with permission. Carrier further contends that the "letter," complained of by the Organization, was merely a report for Carrier's Payroll Accounting system, explaining Claimant's absence for seven hours on May 10, 1991, which is done for all absences. Carrier contends that Claimant was not disciplined in any way, but rather voluntarily marked off for the balance of the day, rather than drive home to get his safety side shields. Therefore, Carrier contends, the Discipline Rule was not applicable and there has been no violation of Rule 34.

In this case we have the Organization stating that Claimant was sent home by his General Foreman which, in effect, was tantamount to assessing Claimant a seven hour disciplinary suspension without benefit of an Investigation under Rule 34 and Carrier stating that Claimant, after declining to use the wraparound safety glasses offered by his General Foreman, voluntarily elected to mark off for the balance of the day rather than drive 40 miles to his home to retrieve his own side shields and then drive 40 miles back to work. Thus, we have an irreconcilable dispute as to the facts before us. Aside from such assertions by each party, the record is lacking in evidence to support either version of the events. Under these circumstances, it is impossible to resolve this conflict of fact. Consequently, we must find that the petitioning Organization has failed to satisfy its burden of proof as to the applicability of Rule 34 or through probative evidence sufficient to justify a sustaining award. We must, therefore, dismiss the claim. (See Second Division Awards 5483, 6192, 6856, 7244 and others.)

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 4th day of May 1994.