

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12747
Docket No. 12712
94-2-93-2-67

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(International Association of Machinists
(and Aerospace Workers
PARTIES TO DISPUTE: (
(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 O.W. Nance, without the benefit of representation or a proper investigation. The assessed discipline was a letter of reprimand, dated June 6, 1991, placed in Machinist Nance's file.
- (2) That accordingly, the Norfolk Southern Railway Company be ordered to remove the letter placed in Machinist Nance's file and all references to same."

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.

Claimant is employed by Carrier as a Machinist at Carrier's Chattanooga System Assembly Shop in Chattanooga, TN. On June 6, 1991, Claimant was issued a letter, which was also placed in his file, concerning his practice of unlacing his shoes toward the end of his tour of duty. It appears from the record that Claimant has had problems in the past following the rules on proper footwear in the Shop. The letter from Superintendent Graab reads as follows:

"Chattanooga, Tn. June 6, 1991 Subject: Safety Rules
and Violations

Mr. O.W. Nance
Machinist
System Assembly Shop

Certified
Return Receipt Requested
P 508 120 596

This will confirm our conversation on the morning of May 31, 1991 concerning your practice of un-lacing your shoes towards the end of your tour of duty.

Norfolk Southern's General Safety Rule 1001 addresses proper attire for work and states, "Any footwear chosen must provide firm ankle support, prevent slipping and be of substantial construction. Footwear provides adequate ankle support if it is six (6) inches or more in height and fits snugly about the leg and ankle".

While rule 1001 does not specifically state shoes must be laced and tied, it does address the issue of ankle support. In my judgement, having work shoes laced and tied is implicit to rule 1001 and for this reason, I stated you were in violation of Norfolk Southern's safety rules.

This matter is being handled with you in that safety is of the first importance in the discharge of duty. Knowledge of and compliance with the rules is essential to your safety as they can prevent injury to yourself and other employees.

D. D. Graab
Superintendent
System Assembly Shop

cc: F. C. Cowan"

On July 24, 1991, the Local Chairman filed a claim on behalf of Claimant requesting the removal of the letter from Claimant's record. The Union contended that the letter constituted disciplinary action and argued that it was imposed on Claimant without benefit of a fair and impartial hearing, as is guaranteed by Rule 34 of the current Agreement. Rule 34 in pertinent part reads as follows:

"RULE 34

- (a) ...an employee will not be removed from service or disciplined (including discharge) except for just and sufficient cause after a preliminary hearing.
- (b) During the preliminary investigation.... the right of an employee to be accompanied by his duly accredited representative (Local Chairman or Committeeman) should he so desire, and provided he is readily available, is recognized."

Carrier denied the claim and the dispute has been placed before this Board for resolution. The Board has reviewed the record of the case and has concluded that Carrier is justified in putting Claimant on notice about the proper footwear to be worn and the proper manner for wearing it. The Superintendent made a sincere effort to explain the situation to Claimant in writing and specifically pointed out in the letter that safety was of paramount importance and that knowledge of the Rules is essential. The Board views this letter as a record of a conversation between the Superintendent and Claimant on the issue of proper footwear and safety. We do not view this letter as a first step on the progressive discipline ladder or a record of a first offense for a safety violation. We view it as a letter of counseling to inform Claimant in regard to what is acceptable. If, however, Claimant is found to be wearing improper footwear or wearing his footwear improperly or in an unsafe manner, he can be disciplined as a first offender. He cannot claim that he was not made aware of the rules in regard to footwear.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.