

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12855
Docket No. 12768
95-2-93-2-155

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

(International Association of Machinists
(and Aerospace Workers, AFL-CIO
PARTIES TO DISPUTE: (
(Burlington Northern Railroad

STATEMENT OF CLAIM:

- "1. The Burlington Northern Railroad violated the controlling agreement, specifically Rule 35, when it unjustly and improperly suspended from service Machinist A. Norris, Chicago, Illinois.
2. Accordingly, the Burlington Northern reimburse Machinist A. Norris for the payment of all time lost, restore all rights and benefits, and remove the entry placed upon his personal record due to his unjust and improper suspension from service."

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.

The Organization alleges that the Claimant was neither provided a fair and impartial investigation, nor proved guilty of the alleged violation of General Rule 563. On August 6, 1992, while working on the wheel lathe a cutting tool bit was broken. There is no dispute that immediately thereafter, the Claimant removed his work gloves in installing the new bit. Subsequently the Claimant sustained an on duty injury to the palm of his right hand. The injury was substantial, leaving a two inch scar and requiring twenty-eight stitches for closure.

By Notice dated August 7, 1992, the Claimant was informed to attend an Investigation to consider his responsibility, if any, for alleged "unsafe discharge of duty resulting in your on duty injury." Following the Investigation of August 18, 1992, the Claimant was notified that he had been found guilty as charged and was assessed a three (3) days suspension.

The Organization argues that the Hearing Officer acted prejudicially, threatened the Claimant, and actually filed the charges, "conducted the investigation, reviewed the record, and assessed the discipline." The Organization maintains that there is no proof in the record to conclude that the Claimant violated Safety Rule 563. The Claimant followed all of the usual procedures in replacing the broken cutting tool bit. The common practice was to remove gloves to assure a proper alignment.

It is the position of the Carrier that the Claimant's injury violated the safety Rule inasmuch as the Claimant should not have performed the work without safety gloves. The Carrier argues that the Claimant's actions were "reckless and evidences a failure to maintain a safe working environment". The Carrier maintains that the testimony demonstrates that Claimant's "unsafe and careless actions" led to the on duty injury.

In the record of this Claim the Board notes that the Notice dated August 7, 1992, is sufficiently clear as to fulfill the Carrier's responsibilities under the Agreement. The record also indicates that the Claimant had an independent review of the Investigation and that the actions of the Hearing Officer were not violative of the Claimant's rights.

On merits, there must be sufficient evidence that the injury occurred because Claimant acted in some unsafe manner. The Carrier would persuade the Board that due to the fact Claimant was not wearing gloves, he performed on duty service in an unsafe manner. The only evidence for the assertion is the Claimant's wound. There is no safety bulletin requiring the use of gloves in the changing of a bit. There is no record of evidence that employees have been so informed, warned, or disciplined for such action. Carrier's reliance on Public Law Board No. 3191, Award 1, is not in point. In that Award, practice conflicted with absolutely clear language directing employee action. In this instant case, the Board finds no explicit Rule mandating the use of gloves when engaged in replacing a cutting tool on the wheel lathe. The testimony supports the Organization's assertion that Claimant's actions were routine and certainly not unusual. The record indicates that the use of gloves while adjusting the cutting tool made proper alignment very difficult.

The Board cannot conclude from this record that the Carrier has met the burden of proof that the Claimant is guilty. The General Foreman confirmed that the Claimant's actions were not uncommon. Separate testimony supports that fact. No Rule is presented to this Board that gloves must be worn to change a cutting tool. No exception to the instant behavior was previously taken by the Carrier. There is a lack of persuasive evidence that the laceration was from metal cuttings, which had no blood residue. Although no one witnessed the accident, a nearby Laborer testified that after being told of the injury, the Claimant did not clean up any blood, and this prior to putting "a rag around" the injury. The Board cannot find it persuasive that the Claimant cleaned up the area prior to reporting the accident.

The Board concludes that there is insufficient evidence that the Claimant failed either to maintain a safe work environment or was "careless and irresponsible" in not utilizing gloves in these very limited and specific circumstances. Sufficient care must be exercised by employees and the Carrier's diligence in pursuing such matters are required. However, when the record is based on too much conjecture, rather than sound probative evidence of a safety violation, the Claim must be sustained.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of February 1995.