

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13159

Docket No. 13054

97-2-95-2-77

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(International Brotherhood of Electrical Workers
(System Council No. 16**

PARTIES TO DISPUTE: (

(Burlington Northern Railroad

STATEMENT OF CLAIM:

- "1. That in violation of the governing Agreement, Rule 30 in particular, Telecommunications Towerman J. D. Good of Jasper, Alabama was unjustly suspended from the service of the Burlington Northern Railroad Company for a period of ten (10) days and a mark of censure placed upon his personal record as a result of an unfair and heavily biased investigation held on March 11, 1994;**
- 2. That the investigation conducted was not fair and impartial as required by the governing Agreement, and;**
- 3. That the Burlington Northern Railroad Company should be directed to make Towerman J. D. Good whole for all wages, rights, benefits and privileges which have been denied him and in addition, the entry of investigation and discipline assessed against him to be removed from his personal record."**

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 were given due notice of hearing thereon.

At the outset, the Organization has alleged that the Investigatory Hearing was held in an unfair and biased manner. A careful review of the transcript of that Hearing fails to support the Organization's contention.

It is undisputed that Claimant was not wearing eye or ear protective gear when he was observed on or about 2:10 P.M. on February 24, 1994. Claimant's explanation was that the gear was in his truck and his truck had been removed from the property by his Foreman. Not only does his "reasoning" not excuse his failure to wear the required equipment, but there is also unrefuted testimony on the record that there were duplicate eye and ear protectors available to him in a nearby building. Under the circumstances the discipline assessed was neither excessive nor arbitrary.

AWARD

Claim denied.

ORDER

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

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division .**

Dated at Chicago, Illinois, this 8th day of September 1997.