

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13362

Docket No. 13252

99-2-97-2-18

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

**(International Association of Machinists and
(Aerospace Workers**
PARTIES TO DISPUTE: (
(The Burlington Northern Santa Fe Railway
(Company (former Atchison, Topeka and Santa Fe
(Railway Company)

STATEMENT OF CLAIM:

“That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the ‘Carrier’) violated Rule 40 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and the its Employees as represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the ‘Organization’) when it wrongfully and unjustly suspended for 30 days Chicago, Illinois Machinist D.M. Grandolfo (hereinafter referred to as the ‘Claimant’) cited in violation of Carrier Rules 1.10 and 1.13 for allegedly reading a newspaper while on duty April 4, 1996 at approximately 8:30 p.m.

Accordingly, we request that for this improper discipline, he be compensated for all lost time and benefits as provided for in Rule 40 (i) of the Controlling Agreement, as amended. Additionally, we request that all records and reference to this matter 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.

On May 30, 1996 Claimant was suspended by the Carrier for a period of 30 days as a result of an Investigation held on May 7, 1996. Carrier found that Claimant had violated Rules 1.10 and 1.13 when he was observed reading a newspaper while on duty on April 4, 1996.

A review of the record shows that Claimant denies reading the paper. The Supervisor stated the opposite, going even further by identifying the article in the paper that the Claimant was reading. Such was not contested.

The Hearing Officer who has the opportunity to watch the demeanor of the witnesses is the best determiner of the facts. Therefore, the Carrier met its burden of proving the that the Claimant violated Rule 1.10 which prohibits the reading of newspapers while on duty. However, it failed to show how Rule 1.13 was violated.

Claimant has over three years of service with no previous discipline on the record. Based on the facts in this case, the Carrier was unjustly harsh. This Board will reduce the discipline assessed to a formal reprimand.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

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 23rd day of February 1999.