

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13495

Docket No. 13411

00-2-99-2-6

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

(International Association of Machinists and Aerospace
Workers

PARTIES TO DISPUTE: (

(The Burlington Northern a Santa Fe Railway Company
(former Burlington Northern Railroad)

STATEMENT OF CLAIM:

“That the Burlington Northern Inc. (hereinafter referred to as the “Carrier”) violated Rule 35 of the Controlling Agreement, Form 12645, as amended, between the Burlington Northern Inc. and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it wrongfully and unjustly issued a Level 1 Formal Reprimand to Traveling Mechanic J. T. Landers (hereinafter referred to as the “Claimant”) for allegedly being in violation of various Carrier Safety Rules.

Accordingly, we request that for this improper discipline, that all records and reference to this matter be removed from his personal record. Additionally, we request he be compensated for all lost time and benefits, if any, as provided for in Rule 34 (g) of the Controlling Agreement, as amended.”

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.

The Claimant's assignment is that of a Traveling Mechanic charged with the responsibility to maintain and repair track equipment used by the Maintenance of Way Employees.

On the claim date, he and another Traveling Mechanic set out to bolt in place an axle underneath the buggy of a tamper. While doing so, the Claimant's working companion suffered a cut on the middle finger of his left hand requiring five stitches to close.

The Carrier, upon investigating the injury, determined that both Mechanics were setting the axle without wearing the gloves furnished by the Carrier as protective equipment. As a result of this fact, an Investigation was set and held on November 19, 1997, following which the Claimant was assessed a Formal Reprimand which became part of his permanent disciplinary file.

There is no question about whether the Claimant was or was not wearing his gloves. He was not and he so stated he was not at the time of the accident. There is, however, testimony that the wearing of gloves is not always mandatory while working on some jobs that require working in tight places where the gloves would be a hindrance. As an example, setting small nuts on bolts in tight areas. Specifically, the Safety Rule pertaining to gloves or hand protection reads as follows:

“ . . . Hand protection when there is a risk of exposure to harmful substances, punctures, severe abrasions, laceration or cuts, chemical or thermal burns, high voltage, vibration, temperature extremes, or infectious biological agents”

Testimony at the Investigation was that the axle was not abrasive (which if it was, clearly would require wearing gloves), but testimony also developed that the wearing of gloves at this juncture would not have been a hindrance. Even though the Carrier has empowered its employees to shun protective wear when working in areas that such garb would hinder the performance of what was being done, it stresses that the gear must be

worn at all other times. The Claimant should have been wearing his gloves. The consensus of opinion is that he could have removed them while attaching the nuts to the bolts holding the harness that holds the axle, but the Claimant was not at that point in the procedure when his companion, also working without gloves, suffered a five stitch gash in his finger while maneuvering the axle for placement.

There is substantial evidence supporting the Carrier's decision. The Board finds no circumstance that would permit a mitigation of the discipline.

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 11th day of April, 2000.