

****CORRECTED****

**Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13545
Docket No. 13442
00-2-99-2-41**

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

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

STATEMENT OF CLAIM:

“Claim of Employee:

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 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 Chicago, Illinois Machinist Dennis J. Durak (hereinafter referred to as the “Claimant”) for allegedly entering into a verbal altercation.

Accordingly, we request that for this improper discipline, he be compensated for all lost time and benefits, if any, 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.

The Claimant, an eight-year Machinist at the time, exchanged words with fellow Machinist Dave Kane on January 28, 1998, resulting in a Level 1 - Formal Reprimand, the Carrier's minimum employee discipline. This claim contests that action.

The record shows that at 11:00 A.M. on January 28, 1998, Shift Coordinator Joe Zovko, in the course of performing a safety audit, walked past the Claimant, who was working on an air project on Locomotive 218 without his hard hat but in a position out of Zovko's sight line. He then observed Machinist Dave Kane sitting on a bucket painting a post not wearing his hard hat and glasses, and advised Kane to put them on. A short time later Kane confronted Zovko in his office and in a loud voice accused Zovko of "picking on him. There's other people in the shop that aren't wearing their safety equipment," Kane complained, "and you never tell them to do anything." Zovko took issue with Kane on the point, and Kane pointed to the locomotive on which Claimant Durak was working and again in a loud voice stated that "Mr. Durak does not have his safety equipment on."

Zovko explained to Kane that there were certain jobs on which one could not safely wear a hard hat, such as doing an air box inspection. With that, Kane left. Approximately an hour later, the Claimant approached Zovko and informed him that he had accused Kane of being a "company snitch," causing Kane to swear at him loudly. The Claimant suggested that he did not care to pursue the matter. Zovko reported the discussion to his superior, who slept on it overnight and the next day determined to issue both men written reprimands for the incident.

The Carrier's applicable Rules read in pertinent part:

"Rule S-28.6 Conduct

Employees must not be:

6. Quarrelsome

or

7. Discourteous

S-28.6.1 Suitable Language

Employees on duty must refrain from using boisterous, profane, sexist, or vulgar language.

S-28.7 Altercations

Employees must not enter into altercations with each other, play practical jokes, or wrestle while on duty or on railroad property."

The central disagreement between the parties is over the question of whether the Claimant admitted that his conduct constituted a Rule violation. If so, the Carrier argues, it warranted a reprimand. The Organization maintains the trial transcript demonstrates that while employee Kane was confrontational, the Claimant was even-tempered, never raised his voice, walked away from Kane's invitation to fight, and even reported the incident to his supervisor.

The Board agrees with much of that argument, but concludes that it fails to give adequate account to the Claimant's conduct that was central to the discipline imposed. The record shows that Machinist James Keiser was on duty and an eyewitness to the events at issue. According to Keiser, he was standing with the Claimant and others when Kane walked up and the Claimant confronted him with, "[Are you] the new safety snitch?" Kane replied, "No, but you are a c- - - - -," and then invited the Claimant to settle the matter "off the property." Durak declined, and according to Keiser, Kane continued to call him names and press him to take the matter to the street. When asked at his Investigation whether his behavior was consistent with the Carrier's Rules, the

Claimant's reply was, "Technically, no." When later asked if he had complied with Rule S-28.6.1, his response was the same. When asked if he had complied with Rule S-28.7, he answered, "No."

Based upon the foregoing, the Board concludes that the Claimant has essentially conceded his violation of the Rules. The discipline assessed was appropriate under the circumstances, and the claim must be denied.

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 25th day of September, 2000.