

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13600

Docket No. 13480

01-2-99-2-82

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(International Association of Machinists and
(Aerospace Workers**

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. Springfield Terminal Railway Company violated Rule 15 of the controlling Agreement, effective June 1, 1995, as amended, when by letter dated October 8, 1998, the Carrier arbitrarily, capriciously and unjustly issued Machinist Phil Davis a formal reprimand after an Investigation/Hearing held on September 10, 1998.**
- 2. Accordingly, the decision should be reversed, Machinist Davis exonerated of the charge(s), his record and personnel files cleared of any reference thereto. And he be made whole for any and all losses suffered as a result of Carrier’s arbitrary, capricious and unjust actions, including but not limited to, time spent at formal Investigation/Hearing of September 10, 1998.”**

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 July 21, 1998, the Claimant disconnected two locomotives and failed to replace the safety chain on locomotive 300. The Claimant admitted to his Supervisor that he was responsible for doing so. The Claimant was subsequently directed to attend an Investigation in connection with the charge that he violated Safety Rule 96 which states, "All safety guards must be kept in place and securely fastened." Following the Investigation, which took place on August 14, 1998, the Claimant was issued a formal reprimand.

The Organization objects to the discipline on two grounds. First, it argues that the Claimant was improperly singled out for discipline when the Carrier relied upon the failed STOP's in the Claimant's record as the basis for discipline in the instant case. It is the Organization's position that the Claimant was selectively disciplined for the violation at issue while others at the work site were not disciplined. The Organization contends that, since STOP's are not subject to the requirements of a fair and impartial hearing under the contract's discipline provisions, the Carrier should not be permitted to use a record of accumulated STOP's to assess discipline.

The Organization's contentions are not persuasive. STOP notices are issued pursuant to the Carrier's Safety Training & Observation Program. The STOP's are used for various purposes, the record shows. Some are issued to document that the employee has complied with a Safety Rule; they are positive in nature. Others are issued to document that the employee has failed to comply with a particular Rule or procedure; they are corrective in nature.

A failed STOP puts the employee on notice of the Carrier's expectations but does not constitute adverse action. It provides the opportunity, through training or corrective behavior, to avoid the need for discipline. Presumably, the goal is for employees to respond favorably to STOP's by demonstrating that they are capable of avoiding or correcting their errors, especially when supervision advises them that they are on the verge of being assessed with discipline.

The Claimant had previously been issued failed stops for safety infractions. In October 1997, he was brought in for a safety review, at which time he was reminded again of the need to comply with the pertinent Safety Rules. Following the safety review,

he was given several days of training and was instructed that any future Safety Rules violations would be handled under the discipline procedure.

Thus, when the Claimant incurred another safety violation on July 21, 1998, the Carrier properly proceeded down a disciplinary path by notifying the Claimant of the charge and conducting an Investigation. The fact that the Claimant was subject to discipline while other employees were not disciplined for similar actions does not constitute unequal treatment under these circumstances. In the absence of evidence that other employees were similarly notified that they had accumulated an excessive number of STOP's and were subject to discipline for future safety violations, disparate treatment has not been proved.

The Board also rejects the Organization's assertion that the Carrier used the Claimant's STOP record as a basis for the current disciplinary action. The evidence was admitted at the Hearing not in weighing the legitimacy of the disciplinary charge but only to prove that the Claimant was on notice that the Employer considered his conduct to be unsatisfactory. For that limited purpose, the evidence was relevant and properly admissible.

The Organization also argues on the merits that, even if there was a technical Safety Rule violation, no harm was done. It maintains that the safety chain in question is intended to prevent employees from walking off the end of a moving locomotive. Since the locomotive at issue here was idle for repair, the cited rule should not apply, the Organization submits.

Safety Rule 96 by its own terms makes no distinction between standing and moving equipment. It requires all safety guards to be kept in place and securely fastened. The Claimant concededly failed to adhere to the Rule's requirements. He admitted to the deficiency. We therefore have no basis for concluding that the assessment of a reprimand was an unreasonable or arbitrary exercise of the Carrier's discretion.

AWARD

Claim denied.

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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 3rd day of May, 2001.