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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13602

Docket No. 13482

01-2-99-2-85

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 January 26, 1999 the Carrier arbitrarily, capriciously and unjustly suspended Machinist David Swett for forty-five (45) calendar days after an Investigation/Hearing held on December 29, 1998.
2. Accordingly, the decision should be reversed, Machinist Swett 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 December 29, 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 November 9, 1998, the Claimant was assigned to perform welding duties on the pilot of locomotive 15 in the Waterville Engine House. It is undisputed that there was no blue flag protection for the Claimant on the engine throttle. When two Carrier Supervisors who observed the violation apprised the Claimant of this, he stated that he must have forgotten. As a result of this incident, the Claimant was issued a notice of Hearing dated November 18, 1998, in which he was charged with violating the Carrier Blue Signal Rule, the Code of Federal Regulations, CFR 49 218.29 (a)(3), and mechanical department special instructions.

Following the Hearing on December 29, 1998, the Claimant was found to have been responsible as charged and was issued a 45-day suspension.

The Board, after careful review of the evidence in its entirety, finds that there is substantial evidence to support the charges herein. Although the Claimant testified initially at the Hearing that he thought he had put the blue flag protection on the engine throttle, he admitted in later testimony that he could not recall what he did nor did he recall what he said when he was approached by the two Supervisors about the violation. We conclude on the basis of this record that the Hearing Officer correctly determined as a factual matter that the testimony of the two Supervisors was more probative and that the Claimant failed to provide blue flag protection on the engine throttle as required.

The Organization's principal defense on the merits is that no real harm could have resulted from the violation. It points out that the Claimant was working on a dead locomotive; that two other co-workers had properly tagged the throttle; and that the Claimant had blue flag protection on the door as required.

Those arguments are not persuasive. In addition to the federal requirement that a blue flag be on the door of the locomotive, the Carrier also requires that a second blue flag be on the throttle. Blue flag protection is very seriously regarded in this industry. See, Second Division Awards 13565, 13486, 13169, 12353. Each employee is required to have his own blue tag at two locations, and the Carrier has legitimate and reasonable safety concerns for the requirement. An employee who disregards these requirements acts at his own peril.

Concluding as we do that the charges have been proven, the remaining question is one of remedy. The Organization contends that the Claimant was disciplined in this instance, not for the blue tag violation, but for an accumulation of failed STOP's. Essentially, the Organization is arguing that the Claimant's STOP record was improperly used as a basis for determining that a 45-day suspension was justified.

That argument is unconvincing. STOP stands for Safety Training and Observation Procedure. We have reviewed the cited precedent awards which have addressed some of the issues that have arisen in connection with STOP's that are issued to employees. There is no unanimity of opinion as to whether or not STOP's constitute counseling or discipline. This may be due in part to the fact that the Carrier has used the STOP's for differing purposes. However, we think the better view was expressed in Second Division Award 13538, which concluded that the STOP's were not discipline, at least in the context in which they were offered, and that their inclusion as part of an employee's record did not result in more severe discipline in a subsequent investigation than would otherwise have resulted.

In the instant case, the record shows that the Claimant had accumulated approximately ten failed STOP's prior to April 1995. A Safety Review was conducted, at which time the Claimant was given additional training and warned that further safety violations would, if proven, result in discipline. It is noteworthy that the Claimant was specifically given instruction on blue flag rules. Unfortunately for the Claimant, he did not correct his course of conduct and he was subsequently issued several disciplinary suspensions for safety violations. Among the disciplinary occurrences was a 15-day suspension in April 1997 for violation of the Blue Flag protection policies.

Under these circumstances, it is clear that a 45-day suspension for a second violation of a rule which is viewed very seriously by the Carrier is not an abuse of discretion. The STOP's issued to the Claimant merely show that the Carrier was willing to stay its hand in issuing discipline until the number of STOP's accumulated to the point where further action was warranted. After that point, when the infractions continued, discipline was properly administered. The quantum of discipline in this case is based, not on the record of STOP's, but on the fact that the Claimant had a discipline record of prior suspensions which warranted the disciplinary penalty imposed here. We must therefore rule to deny the claim.

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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 3rd day of May, 2001.