

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13607

Docket No. 13487

01-2-99-2-79

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 November 3, 1998 the Carrier arbitrarily, capriciously and unjustly suspended Machinist Craig Batchelder for three (3) working days following formal Investigation/Hearing held on June 24, 1998.**
- 2. Accordingly, the decision should be reversed, Machinist Batchelder exonerated of the charge(s), his record and personnel file 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 June 24, 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 May 8, 1998, Waterville Mechanical department clerk Veronica Predmore submitted a written complaint to the Carrier stating that on May 6, 1998 she had been the recipient of unwelcome sexual advances from the Claimant. She indicated that this was not the first time this had occurred. According to Predmore, the Claimant repeatedly, and against her wishes and protestations, made unwelcome and inappropriate sexual advances towards her. Predmore stated that she had a problem with the Claimant making advances towards her in 1997 and she reported the matter to Shop Manager J. Patterson. Patterson testified that he spoke to the Claimant and thought the problem had been resolved.

Predmore stated that the Claimant's unwelcome sexual advances and remarks continued until May 6, 1998, when he blocked her exit from the Engine House and improperly fondled her around the area of her neck and shoulder. At that point, Predmore requested a meeting between her union representative and a representative from the Claimant's union. She sought an apology from the Claimant and a promise that the conduct would not reoccur. When that proved unsuccessful, Predmore brought her complaint to the Carrier pursuant to its published sexual harassment policy.

The Claimant was subsequently notified to attend an Investigation on the charge of sexual harassment. As a result of the evidence presented at the Hearing, which took place on June 24, 1998, the Claimant was found to have been responsible for making improper advances towards Ms. Predmore, and he was assessed a three-day suspension.

At the Hearing, Ms. Predmore repeated her account of the May 6, 1998 incident. The Claimant, who acknowledged that he had been given a copy of the Carrier's Sexual Harassment Policy, denied the accusations. He admitted to talking to Ms. Predmore inside the Engine House on the date in question, but claimed that he never made any sexual comments nor did he physically touch Ms. Predmore. The Claimant further testified that he had on occasion commented that Ms. Predmore looked nice, but he stated that there were no inappropriate sexual connotations attached to his remarks. The Claimant also stated that he was unaware that Ms. Predmore had previously complained to the Carrier about his behavior and claimed that Manager Patterson never spoke to him about it.

The Board has reviewed the record in this case in its entirety. Our standard of review, particularly where there are credibility conflicts on the record, is established. The Board does not make de novo factual findings. Our role is appellate in nature, and we are required to sustain the Hearing Officer's findings provided that there is substantial evidence in support thereof. Third Division Award 11105; Second Division Award 7542; Fourth Division Award 3729.

Here, notwithstanding the Organization's attempts to impugn the motivation of the Claimant's accuser, there is sufficient evidence so as to reasonably conclude that the Claimant is guilty of the charges lodged against him. It must be remembered that Ms. Predmore's claim that she had earlier complained about the Claimant's conduct was borne out during the Hearing from the supporting testimony of Manager Patterson. In order to credit the Claimant's wholesale denials, the Hearing Officer would have had to discredit the testimony of both Ms. Predmore and Manager Patterson. No such finding is warranted on this record.

Given this factual predicate, the Carrier was justified and obligated to take action. Ms. Predmore sought to put a stop to the Claimant's offensive conduct. The Carrier's Sexual Harassment Policy, of which the Claimant was aware, promotes a workplace that is free of sexual harassment. An instance of physical touching, when it is unwanted or unwelcome, is viewed seriously by the Carrier, particularly when considered in conjunction with the sexually inappropriate comments directed toward Ms. Predmore by the Claimant. We certainly cannot say that a three-day suspension was an unduly harsh or unreasonable penalty for the misconduct at issue here.

No factors are present on this record which would vitiate the discipline imposed. The Organization argued that the Claimant was not afforded procedural due process but the Board finds that argument to be without merit. The Organization objected in particular that the Claimant was not allowed to have Mr. Huard as his union representative during the Hearing. However, Mr. Huard was called as a witness to testify concerning conversations he had with Ms. Predmore regarding the instant case. The Claimant was ably represented at the Hearing by the General Chairman and given full opportunity to develop his theory of the case. Having been afforded all procedural and due process rights, there is no basis to conclude that the Claimant was not given a fair Hearing.

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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 4th day of June, 2001.