Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13610
Docket No. 13493
01-2-99-2-90

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division/
(Transportation Communication International Union
(
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway violated the terms of our current agreement, in particular Rule 13.1 when they arbitrarily assessed a thirty (30) day suspension to Carman Fred E. Curtis as a result of an investigation held on July 15, 1998.

2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Fred E. Curtis in the amount of eight (8) hours pay for each workday he was withheld from service, commencing August 11, 1998 through and including September 9, 1998. Also, the carrier should remove all correspondence regarding this discipline, and provide any other lost compensation as provided by the agreement."

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 facts of this case are not in dispute. On June 17, 1998, the Claimant was observed by the Manager of Locomotive Maintenance sanding a passenger car without the required eye protection. The Claimant admitted that he was trained regarding personal protective equipment, and knew he should have been wearing goggles while performing his assignment on that date.

The Claimant was issued a failed STOP for failing to wear eye protection under the Carrier's Safety Training Observation Procedure. The Carrier then reviewed the incident and notified the Claimant to report for an Investigation to determine his alleged responsibility in connection with a violation of Rule 42 of the Carrier's Safety Rules which require eye protection while performing sanding work. After an Investigation was held on July 15, 1998, the Claimant was found guilty of the charges and a 30-day suspension was imposed.

The Organization's chief complaint is that the Claimant was subject to dual discipline when he was first issued a STOP and then a suspension for the same offense. The Board agrees with the general proposition that disciplining an employee twice for the same act constitutes double jeopardy, thereby violating an employee's fundamental due process rights.

We part company with the Organization, however, when it asserts that the issuance of a failed STOP to the Claimant amounted to discipline. Based on our review of the record, it would appear that the STOP was utilized as a "caution and instruct" device to record the incident and to notify the employee of the Carrier's requirements. It was a safety and training notice, not a disciplinary action.

We have reviewed Second Division Award 13403, cited by the Organization. In that case, the Board held that the issuance of a STOP to an employee allegedly observed hanging out the window of a locomotive went beyond mere counseling concerning safe work practices and constituted discipline for a specific Rule violation. We disagree with the conclusion therein that the STOP form accuses an employee of violating a Rule and finds him guilty. On the contrary, under the particular facts on this record, it is clear that the STOP issued in connection with the June 17, 1998 incident amounted to nothing more than documentation of a non-disciplinary notification and caution.

That being the case, we find that the Carrier did not subject the Claimant to dual discipline or double jeopardy when it reviewed the incident documented in the STOP and determined that an Investigation and possible discipline were warranted. The Claimant had been instructed about this particular safety violation before and the Carrier properly concluded that, since training and instruction had not been successful, a disciplinary approach was necessary. The 30-day suspension was the only discipline issued for the incident at bar.

The Organization's remaining arguments are similarly unpersuasive. Notwithstanding its contentions to the contrary, we find that the Claimant was given a fair and impartial Investigation. The presence of two Hearing Officers, while not a desirable procedure, is neither a violation of an Agreement provision nor a prejudicial error which would serve to vitiate the discipline imposed.

Finally, we find no basis for a determination that the issuance of a 30-day suspension was arbitrary, capricious or unreasonable. Review of the Hearing transcript established that the Claimant had already been issued a suspension in 1996 for a safety transgression. He subsequently received two additional suspensions for misconduct arising from incidents in 1997 and 1998. The Claimant's disciplinary history, and not the record of STOP's, was the basis for the quantum of discipline assessed for the Rule infraction admittedly incurred here.

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.