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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13674

Docket No. 13561

02-2-00-2-38

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13.1 when they arbitrarily suspended Archie W. Sears from service as a result of an investigation held on July 8, 1999.
2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Archie W. Sears in the amount of eight (8) hours pay for each workday he was withheld from service commencing August 9, 1999 through and including August 13, 1999. Also, any reference to this discipline should be removed from his personal record and file.”

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.

After an Investigation, the Claimant received a five-day suspension by letter dated August 4, 1999 for uncivil deportment and conduct.

The record shows that on June 24, 1999, Assistant Manager M. Lozano attempted to give and have the Claimant sign a "STOP" (Safety Training Observation Procedure). According to Lozano, the Claimant refused to sign and told Lozano that "... you can shove it up your ass." Manager S. Berkshire heard the Claimant make the comment. When asked if he made the comment, the Claimant did not deny doing so, but testified "Not that I remember."

Substantial evidence supports the Carrier's determination that the Claimant engaged in misconduct. Assistant Manager Lozano and Manager Berkshire corroborate each other that the Claimant told Lozano to "... shove it up your ass" when Lozano attempted to give the Claimant a STOP. We take particular note that the Claimant did not deny making the comment, but only stated that he could not remember doing so.

Under the circumstances, we cannot find that a five-day suspension for the demonstrated misconduct was arbitrary.

The Organization focuses upon the STOP as discipline issued without an Investigation. However, it has been held that a STOP is not discipline. See Second Division Awards 13401, 13501, 13538, 13539, 13602. In any event, the Claimant's disagreement with the Carrier's determination that a STOP was in order should have been confined to the orderly processes of the dispute resolution procedure rather than advising the issuing Carrier Official where he should place it.

The Organization's other arguments are similarly unpersuasive to change the result.

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 11th day of February, 2002.