

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13680

Docket No. 13586

02-2-00-2-68

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

**(Brotherhood Railway Carmen Division
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union:

- 1. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13.1 when they arbitrarily administered a Formal Reprimand to Raymond A. Delano, as a result of an investigation held on November 23, 1999.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to remove the discipline from the file and record of Raymond A. Delano. Additionally, to compensate him for any lost time as a result of this investigation and as set forth in our current 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.

At the time this dispute arose, the Claimant, who has 25 years of service, was assigned as a Carman at the Carrier's car repair facility in Waterville, Maine. On November 11, 1999, the Carrier was undergoing an inspection by the Association of American Railroads (AAR), as performed by a TTCI Inspector. During this inspection, the TTCI inspector and M. Berkshire, the Claimant's Supervisor, discovered that the air hoses on a Carrier box car was out of date. There is no dispute that the Claimant had earlier signed an inspection form indicating that he had inspected the air hoses on the car.

On November 16, 1999, the Claimant was issued a Notice of Hearing in connection with the charge:

"Failure to properly perform your duties as a Carman on November 11, 1999, specifically, failure to change out of date air hose on Car MEC 20047 as found by TTCI Inspector and myself on November 11, 1999."

Following the Hearing, held on November 23, 1999, the Claimant was issued a reprimand. The Organization protests the discipline on several grounds. First, it contends that the Carrier did not meet its evidentiary burden of proving the alleged misconduct. We do not agree. In disciplinary matters of this kind, the Board's function is to determine whether the record contains substantial evidence to support the Carrier's decision. The principle was aptly stated in Third Division Award 35608 as follows:

"It is important to note that the substantial evidence test does not require that the supporting evidence be conclusive. Nor does the test require that the record be free of conflicting evidence that presents an alternative explanation that favors the Claimant's position."

Here, the Organization contends that the TTCI Inspector's report was not submitted at the Investigation and therefore there was insufficient proof of wrongdoing. That argument is without merit. There is ample evidence on this record to support the charges directed against the Claimant, even in the absence of the report. The record shows that the Claimant signed the check off sheet for the box car indicating that he had inspected the air hoses. Moreover, he was aware of the fact that air hoses over eight years old must be changed. Nevertheless, when the air hoses were inspected,

according to the testimony of the Claimant's Supervisor, the out-of-date air hoses were discovered. The Claimant's co-worker, Mr. Boudreau, verified that the air hoses were changed shortly thereafter. On this record, the Board finds that there was substantial evidence, even absent the TTCI Inspector's report, to conclude that there had been a dereliction of duty.

By the same token, we find unconvincing the Organization's contention that mitigating circumstances warrant the reduction of the penalty imposed. The Organization points out that the TTCI Inspector has no authority to penalize the Carrier for a defect discovered on one of the Carrier's own cars. Penalties are assessed to the Carrier only for defects on foreign cars, the Organization submits. Moreover, this was a "minor" violation that did not warrant the imposition of formal discipline. A caution and instruct would have sufficiently apprised the Claimant to correct his inspection work in the future.

Regardless of whether the noted defect could have resulted in a penalty to the Carrier or not, the Carrier has the right to expect that inspections will be done correctly. When the Claimant signed the check list indicating that the hoses had been inspected, he was vouching for the condition of those hoses. A reprimand under these circumstances is not outside the range of reasonableness afforded to the Carrier in the exercise of its discretion once misconduct has been proven. It is hoped that the corrective nature of the discipline will take effect.

Finally, the Organization objected to the fact that the Claimant's prior discipline was entered into the record. The Claimant's disciplinary history included a three-day suspension in February 1999 which was appealed and upheld by the Board. We find nothing objectionable about permitting the introduction of an employee's prior disciplinary record to determine the quantum of discipline to be imposed.

AWARD

Claim denied.

Form 1
Page 4

Award No. 13680
Docket No. 13586
02-2-00-2-68

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.