

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13956
Docket No. 13841
08-2-NRAB-00002-070030
07-2-30

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

(Brotherhood of Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13, when they assessed the record of Carman James Rae with a Formal Reprimand and to attend four (4) hours of Safety Rules review, which include the PPE requirements for different tasks, as a result of an investigation held on September 20, 2006.
2. That, accordingly, the Springfield Terminal Railway Company be required to remove the Formal Reprimand. Also, all related statements be removed from his file, including, that the discipline be expunged 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.

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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 September 1, 2006, Carrier notified Claimant to appear for a formal Investigation on September 19th which was subsequently postponed until September 20, 2006 concerning the following charge:

“This Notice of Hearing is issued to develop the facts and place your responsibility, if any, in connection with the incidents outlined below:

Violation of Rule 42; which states:

“Employees must wear approved eye protection while performing work hazardous to the eyes. Eye protection, as furnished by the company (goggles, face shields, etc.), must be worn when doing any kind of work which may result in injury to the eye. Eye protection must be kept clean and in good repair and those employees requiring eye protection must have same on their person at all times and ready for immediate use.”

This caused a metal fragment to become lodged in your left eye, requiring removal by medical personnel.”

On October 6, 2006, Claimant was notified that he had been found guilty as charged and was assessed a Formal Reprimand with the requirement to attend a four hour safety rules class during his regularly scheduled hours.

The facts of the case are that on August 24, 2006, the Claimant while doing grinding work on BM3532 had a piece of metal hit and lodge in his eye.

It is the Organization’s position that Claimant was wearing his safety glasses under his welding helmet for eye protection which was in accordance with Safety Rule 42 which states: “Employees must wear approved eye protection while

performing work hazardous to the eyes.” Claimant complied with the Safety Rule and the accident was not possible to avoid, therefore, no discipline should have been issued.

It is the position of the Carrier that the Claimant should have been wearing a face shield instead of a helmet because a helmet is not the proper Personal Protective Equipment (PPE) as required by its Memo of 12/11/1995 which states in part in the first paragraph the following: “All employees using a pedestal grinder or hand grinder and wire wheels will be required to wear eye protection and a face shield.” Because Claimant did not abide by safety requirement the discipline should not be disturbed.

The Board has reviewed the transcript and record of evidence and finds that the Carrier is correct when it states that the safety rule requires that when an employee is doing grinding work he is required to wear “...eye protection and a face shield.” Claimant even acknowledged that in the future he would wear a face shield when he testified as follows: “Now I guess I would wear a plastic shield.” Claimant did not follow Carrier’s written instructions as he chose not wear a face shield and because of that he was guilty as charged.

The only issue remaining is whether the Formal Reprimand and the requirement to attend a four hour safety class was an appropriate punishment. The Board finds and holds that the discipline in this instance was appropriate because it was not arbitrary, excessive or capricious. The discipline will not be set aside.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of October 2008.