

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14023
Docket No. 13904
10-2-NRAB-00002-090017**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Metro-North Railroad**

STATEMENT OF CLAIM:

“Appeal of discipline of ‘Twenty (20) days Suspension reduced to Ten (10) days Suspension’, imposed upon Electrical Worker Louis Gachette on January 6, 2009, by the MTA Metro-North Railroad. We respectfully request adjudication of said case and request that the discipline be removed from Mr. Gachette’s record; that he be restored to service with seniority unimpaired and with all pay due him including but not limited to earnings lost, holiday pay, overtime he could have earned, vacation pay and other forms of compensation from the first day he was held out of service; and that he be made whole for vacation rights, made whole for pension benefits including Railroad Retirement and Unemployment Insurance, made whole for any other benefit that he would normally have earned during the time he was held out of service.”

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 Organization here takes exception to the Carrier's action in assessing Claimant L. Gachette a disciplinary suspension of 20 days, later reduced to ten days, for his role in an incident causing damage to company property on October 17, 2008.

According to the record before the Board, the Carrier contends that at approximately 4:10 P.M. on that date, in the process of moving Train 2009 out of the Carrier's shop on Track 12 at the Highbridge facility, the Claimant accidentally lowered a gate onto a shuttle wagon, causing what it asserts was significant damage to the shuttle stack and door. That mishap, the Carrier argues, was due in part to the Claimant vacating his safety position in breach of the Carrier's protocol to take direction from a Foreman with no supervisory authority over his work.

In brief, the Organization argues that just cause for discipline has not been established. First, it contends that with respect to abandoning his safety position - an assertion not contained in the charge letter - the Claimant was required to respond to the Foreman and would have been subject to discipline on that account had he failed to do so. Secondly, the Organization argues that the record is devoid of evidence indicating the Claimant was the person who lowered the door onto the wagon. Third, it maintains that the record reflects bias on the part of the Hearing Officer. Lastly, for an employee with seven years of unblemished service, the facts do not support the level of discipline imposed.

Although the record is obscure in parts, the facts appear to be as follows. As the Claimant was tending to the movement of Train 2009 on Track 12, with a shuttle wagon at its rear pushing north and seven cars cleared through the gate, Car Cleaning Foreman T. Greene engaged him about a pre-existing problem she had experienced with a door on Track 10. The gate at that track had apparently been partially lowered and was in contact with the headlights of a train. After asking him if he had lowered the door and hearing him deny doing so, she cautioned him about the situation. The Claimant, however, had moved away from his safety position on

Track 12, where he was required to remain until Train 2009 was out of the barn, to check out Greene's complaint.

The Carrier argues that as it was in the process of attempting to address Greene's problem and reverse the gate on Track 10, the Claimant pushed the wrong button, dropping the gate on Track 12. Although the Claimant concedes he does not take direction from Greene, and Greene denies ever giving him any orders on this occasion, the Claimant suggests that he believed from Greene's "body language" that an emergency situation had developed requiring his attention.

As an initial matter, the Board found nothing in the record to suggest that the Hearing Officer in any way denied the Claimant his rights to contractual due process. With respect to the merits, he concluded from the testimony and written statements supplied by all principals that Foreman Greene at no time issued orders to the Claimant requiring any action on his part. Secondly, no basis was shown for the Claimant's subjective belief that any emergent condition existed justifying his leaving his safety post to attend to a gate on an adjacent track. The testimony of Greene plainly supports that conclusion.¹ It further provides eyewitness evidence that the Claimant did in fact operate the buttons that caused the gate in question to drop prematurely. Furthermore, it is undisputed that subsequent examination of all mechanisms revealed no mechanical defects. In sum, while we recognize that aspects of the Carrier's case offer somewhat circumstantial evidence in support of its charges, it is well established in this forum by generations of Awards that such proof may satisfy the Carrier's evidentiary burden.

The Board thus does not find the Carrier's determination with respect to the Claimant's role in this accident to be in any way arbitrary or lacking in record support. As the Organization emphasizes, the Claimant is apparently recognized as a good employee; but in this instance beyond that general argument, the record affords no grounds for disturbing the ten-day suspension ultimately imposed in line with the Carrier's progressive disciplinary policy.

¹ In reaching this result, the Board takes into account the Organization's suggestion that Greene herself probably contributed to this mishap and, accordingly, her testimony must be met with skepticism. The record, however, offers no basis for disturbing the credibility judgments made by the Hearing Officer with respect to Greene's testimony, which was in no way impugned on cross-examination. (The record hints that Greene herself was disciplined for her contribution to the mishap.)

**Form 1
Page 4**

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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 13th day of May 2010.