NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23515

THIRD DIVISION

Docket Number W-23473

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The discipline assessed Section Laborer G. R. Whitehead was unwarranted and without just and sufficient cause (System File D-28-79/MW-15-79).

(2) Section Laborer S. R. Whitehead shall be afforded the remedy prescribed in Rule 28(d)."

OPINION OF BOARD: An investigation was held on May 8, 1979 to determine whether Claimant was insubordinate when he failed to comply with the Roadmaster's instructions on May 2, 1979 to wear company safety glasses, while on duty at American Fork, Utah and for his continued failure to comply with these instructions. He had been warned on April 23 and 26 to wear these glasses.

Based on the record developed at the trial, Claimant was found guilty of the charges and suspended from service for eighteen (18) days. This disposition was appealed.

In defense of his petition, Claimant argues that he was prejudged by Carrier, since he was dismissed from service by the Roadmaster on May 2, 1979. The investigation was held on May 8, 1979 and the disciplinary decision was cot rendered until May 14, 1979. He contends that his Company issued safety glasses were chipped and scarred while working on the job and he was forced to purchase his own industrial safety glasses in view of the unavailability of company Issued glasses. He avers that the eighteen (18) day suspension was arbitrary and capricious and an abuse of managerial discretion.

Carrier contends that Claimant was reprimanded on two (2) separate occasions prior to the May 2, 1979 incident when he was taken out of service. It argues that he was aware of the rules governing the wearing of company issued safety glasses and he consistently disregarded this mandatory workplace obligation on the several days he was admonished. It asserts that he was pointedly warned that he would be removed from service, if he failed to observe this fundamental safety requirement and his removal was no surprise or an abuse of managerial authority.

In our review of this case, we agree with Carrier's position. Careful analysis of the investigative record does not indicate that Claimant was improperly removed from service on May 2, 1979 or that it was tantamount to dismissal, since he was explicitly advised thathewouldbe removed from service if he did not wear his company issued safety glasses. He had been warnedtwice. In fact, this question is mooted by the retroactivity of the penalty.

The record shows that he was remiss on May 2, 1979 when he did not comply with the Roadmaster's prior warnings and instructions and such conduct constitutes insubordination. Moreover, we are not convinced that he was compelled to purchase his own safety glasses because of their unavailability on the property. The foreman had an extra pair available but Claimant had cot,, reported that his company issued safety glasses were impaired or for that' matter, requested anewissuance.

In Third Division Award 20030, which conceptually parallels this case, we stated in pertinent part that:

> "It is a recognized principle of arbitral law, and especially by this Board, that the duty of an employee is to obey a reasonable order; and, if he disagrees with such an order to seek redress through the grievance machinery of the Agreement. (gee Awards 7921, 5170, 4886, 8712, 15828 and 16286). There are hot sufficient mitigating circumstances presented on thisrecord to support a conclusion other than' the Inescapable one that Claimant's conduct amounts to insubordination."

In the instant case, Claimant's refusal to wear company issued safety (passes on May 2, 1979, notwithstanding two prior warnings, amounts to insubordination and we are constrained to affirm Carrier's determination. Claimant was guilty of a serious offense, which potentially affects the safety of rail opera-~ tions, and it should not be lightly treated. We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That ths Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: R. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1982.