

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24895
Docket Number MW-24999

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Colorado and Southern Railway Company

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

(1) The Agreement was violated when Trackman N. E. Willis was suspended from service for one (1) day (December 28, 1981) without just and sufficient cause and without benefit of the procedure stipulated in Rule 26(a) [System File C-1-82/W-48].

(2) Trackman N. E. Willis shall be allowed eight (8) hours of pay at his straight time rate.

OPINION OF BOARD: By letter dated January 26, 1982 a claim was filed by the Organization for eight (8) hours pay at regular straight time on behalf of Claimant N. E. Willis. In this and subsequent correspondence on property the Organization charged the Carrier with violation of Rule 26 of the current Agreement because the Claimant was allegedly suspended on December 28, 1981 without a hearing when he was sent home on that day for reporting to work without safety glasses.

The position of the Carrier throughout the handling of this case on property has been that the Claimant was not, in fact, suspended when he was not allowed to work on December 28, 1981 because he forgot his safety glasses. The Carrier's position is that its action only represented an exercise in managerial responsibility whereby it had a right to expect comportment on the part of this employee which was within keeping with the safety policies on property.

The record shows that the Carrier had forewarned its employees that they would be sent home if they reported to work without proper safety equipment. Further, the Claimant had been issued a pair of safety glasses just five (5) days prior to this incident.

In view of Carrier safety policy which was known, and since the Claimant's only explanation of why he did not have his glasses was that he forgot them at home, the Board views the actions of the Carrier in the case at bar as an exercise of managerial discretion rather than a disciplinary suspension which would be covered by current Agreement Rule 26. The instant ruling is consistent with Board precedent. In prior Awards, it was held that when forewarnings of the consequences of violative behavior related to Carrier policy have been made public the Agreement Rule covering discipline is not necessarily controlling with respect to such issues as safety and tardiness (Third Division 23294, 23514, 24392).

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 the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

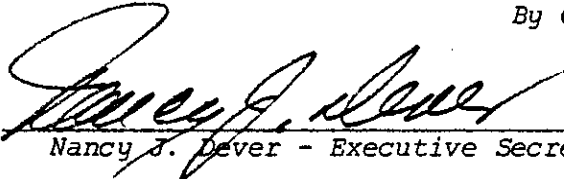
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1984.